Michigan Law Review

Volume 47 | Issue 7

1949

NEGLIGENCE-CAUSATION-INTERVENING CAUSE

Herbert E. Phillipson, Jr.
University of Michigan Law School

NEGLIGENCE—CAUSATION—INTERVENING CAUSE—Plaintiff alleged that while driving on a two-lane highway, he was overtaken by defendant, who attempted to pass against oncoming traffic and forced plaintiff to turn right in an effort to leave the highway. At that point, a passenger in plaintiff's car seized the steering wheel, causing the car to travel left across the highway without collision and then overturn, injuring plaintiff. *Held,* demurrer to complaint sustained. The passenger's act was not foreseeable, was not the normal response to the situation

created by the defendant, and was so extraordinary as to be an efficient intervening cause. *Robinson v. Butler,* (Minn. 1948) 33 N. W. (2d) 821.

A party is liable for an injury if it would not have occurred without his negligence and the intervening force[1] should have been foreseen by him when he failed to use due care,[2] or if the intervening force was the normal result[3] of his negligence. Thus in the principal case the court must have considered the passenger's act either: (1) an unforeseeable, independent cause wholly unrelated to the situation caused by the defendant's negligence, or (2) an unforeseeable, abnormal, extraordinary response to that situation. To hold as a matter of law that the passenger's seizing the wheel was entirely independent (that is, not caused in fact by defendant's negligence) would be unjustified. The court's holding seems to be, therefore, that the passenger's act was, as a matter of law, not a normal reaction to the situation caused by the defendant's negligence. Reasons given by the court for its decision are that the automobile was fully under control when the passenger seized the wheel, and that no harm would have resulted if there had been no interference with the plaintiff's driving. It seems difficult to draw these conclusions from the complaint as stated in the opinion; furthermore, any conclusion as to what the result of a situation would be if the intervening act had not occurred cannot relieve defendant of liability if the intervening act is normal. The degree of control of the automobile and the likelihood of harm at the time of the passenger's act should not, as a matter of law, determine the normalcy of the intervening act. Reasonable minds might well differ as to whether the normal reaction of an automobile passenger to being forced off the road might be an attempt to take control of the situation.[4] That being the case, a jury question was presented.[5] The demurrer might also have been overruled on the ground that even if the passenger's seizing the wheel were unforeseeable, the accident, the final result, was nevertheless fore-

[1] "An intervening force is one which actively operates in producing harm to another after the actor's negligent act or omission has been committed." 2 TORTS RESTATEMENT, §441 (1) (1934).

[2] Ferraro v. Taylor, 197 Minn. 5, 265 N.W. 829 (1936); Dixon v. Bell, 5 M. & S. 198, 105 Eng. Rep. 1023 (1816); 2 TORTS RESTATEMENT, §447(a) (1934).

[3] The term "normal intervening act" has been construed by the courts to include what might be termed unusual responses to the situation presented by defendant's negligence, but not to include extraordinary or reckless responses. Crow v. Colson, 123 Kan. 702, 256 P. 971 (1927); Lee v. Donnelly, 95 Vt. 121, 113 A. 542 (1921). An otherwise unreasonable act by the plaintiff resulting from fear of injury to himself or another caused by the defendant's negligence does not constitute contributory negligence. Wagner v. Intl. R. Co., 232 N.Y. 176, 133 N.E. 437 (1921); 19 A.L.R. 4 (1922). A third person injured by the consequences of that act may also recover. Smith v. Carlson, 209 Minn. 268 at 273, 296 N.W. 132 (1941).

[4] Supra, note 3. The court in principal case quotes liberally from 2 TORTS RESTATEMENT, §§441, 442 (1934), but ignores §§443, 444, 445, stating that an intervening act is not a superseding cause when it is the normal response to the situation caused by defendant's negligence, the normal response to fear or emotional disturbance which defendant caused by his negligence, or a normal effort of rescue or defense. The only factual situation compared by the court is Kennedy v. Hedberg, 159 Minn. 76, 198 N.W. 302 (1924), where the defendant did not in any way cause the intervening act.

[5] Arnold v. Northern States Power Co., 209 Minn. 551, 297 N.W. 182 (1941).

seeable by the defendant, and he should be held liable although it was brought about by an unforeseeable intervening force.[6] Whether this approach is supported by authority is a question on which writers differ.[7]

Herbert E. Phillipson, Jr.

[6] Johnson v. Kosmos Portland Cement Co., (C.C.A. 6th, 1933) 64 F. (2d) 193; McDowell v. Village of Preston, 104 Minn. 263, 116 N.W. 470 (1908). The opinion of the court gives no indication that the argument was advanced.

[7] For opposing views see PROSSER, TORTS 364-369 et seq. (1941); and Carpenter, "Proximate Cause," 14 So. CAL. L. REV. 416 at 422 et seq. (1941).