NEGLIGENCE-CAUSATION-INTERVENING CAUSE

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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 inter­

A party is liable for an injury if it would not have occurred without his
negligence and the intervening force1 should have been foreseen by him when
he failed to use due care,2 or if the intervening force was the normal result3 of
his negligence. Thus in the principal case the court must have considered the
passenger's act either: (1) an unforeseeable, independent cause wholly unrelat­
ted 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. Int'l. 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 RESTATE­
MENT, §§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 defend­
and did not in any way cause the intervening act.

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

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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).