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LIABILITY FOR DEFECTIVE BRAKES IN A BORROWED CAR

*Sothoron v. West*¹

The defendant was driving an automobile owned by a friend, who had allowed her to take over its control in order to take his son for a drive. After driving a distance of several miles the defendant's car struck that of the plaintiff in the rear. There was a very steep incline where the accident occurred, and the defendant testified that in negotiating the hill the brakes on the car failed to hold and this failure caused the accident. The trial judge held for the defendant, saying: "The question goes back to whether [the defendant] knew or should have known whether the car she was operating was in a defective condition, [and] I do not find any evidence to indicate that, so as between herself and [the plaintiff] why it just seems that the case should be decided in favor of the defendant." This was reversed on appeal. The opinion, after noting the fact that the defendant offered no evidence of any inspection of the borrowed car, ruled that the appellee was not excused from the charge of negligence because of the fact that her brakes suddenly failed when she had driven a number of blocks without making the slightest test of them.

It appears that many states have statutes in force providing for certain equipment that motor vehicles should carry. These laws vary as to their specific details.² Maryland has such a statute regarding the condition of brakes, found in Article 56, Section 194(I), and providing "every motor vehicle, except trailers and side cars, while in use on the public highways of this state shall be provided with adequate brakes." American Jurisprudence indicates that a failure to comply with these statutory provisions requiring good and sufficient brakes on automobiles generally renders the owners³ liable for injuries or damages resulting from such failure, where the inadequacy of the brakes was the proximate cause.⁴ Cases seem to concur in this view, as shown by *Gilmore v. Caswell*,⁵ which decided "it is negligence to operate a vehicle on the public highway without

¹ 26 A. (2d) 16 (Md., 1942).

² 42 Corpus Juris 893, Motor Vehicles, Sec. 596.

³ There is some doubt, as shown in a subsequent paragraph of this note, as to whether the liability primarily is on owner or driver.

⁴ 5 American Jurisprudence 643.

⁵ 65 Cal. App. 299, 224 P. 249 (1924).

brakes adequate to check the speed thereof and to stop the vehicle as required by Motor Vehicle Law of 1923." A similar holding that a violation of the statute was negligence was reached in Indiana in the case of *Fox v. Barenman*.⁶ This would seem to be a judicious rule for the safety of those entitled to use our highways in view of the increasing number of cars on the road, at least in normal times.

In other states having similar statutes, there appears to be a diversity of opinion as to whether driving a car on the public highway with defective brakes is negligence per se, or merely a question for the jury.⁷ Cases under similar statutes treating the issue as a question for the jury are found in California, Texas, and Vermont;⁸ however it is worthy to note that California had earlier held such to be negligence per se in *Gilmore v. Caswell*.⁹ Cases holding violation of the statute to be negligence per se are found in Missouri, Oregon, Alabama, and Georgia.¹⁰ This diversity of authority is also seen in the cases which were not decided under any similar statute regulating brakes or, at least, where no mention is made of such a statute. Minnesota, Washington and Iowa¹¹ appear to hold the problem to be for the jury in such absence; but New Jersey appears to decide it is negligence per se,¹² although there was an earlier case following the former view.¹³ The Court of Appeals indicated that treating failure of brakes as prima facie negligence was "the better and more general rule". Undoubtedly the fact that the brakes of an auto are defective is a material element in the determination of a question of negligence in a case involving a collision with such auto, at least where the driver knew or by the exercise of proper care should have known of the defect.¹⁴

Huddy, in his *Encyclopedia of Automobile Law*, writes that "generally speaking, it is the duty of one operating a

⁶ 178 Ind. 572, 99 N. E. 989 (1912).

⁷ See 63 A. L. R. 399.

⁸ *Phillips v. Pickwick Stages*, 85 Cal. App. 571, 259 P. 968 (1927); *Co-op. Furniture Co. v. Surety Co.*, 264 S. W. 201 (Tex. Civ. App., 1924); *Landry v. Hubert*, 101 Vt. 111, 141 A. 593 (1928).

⁹ 65 Cal. App. 299, 224 P. 249 (1924).

¹⁰ *Plannett v. McFall*, 284 S. W. 850 (Mo. App., 1926); *Foster v. Farra*, 117 Ore. 286, 243 P. 778 (1926); *Harden, Inc., v. Harden*, 29 Ala. App. 411, 197 S. 94 (1940); *Orange Bottling Co. v. Smith*, 35 Ga. App. 92, 132 S. E. 259 (1926).

¹¹ *Owens v. Iowa Co.*, 186 Iowa 408, 169 N. W. 388 (1918); *Kolbe v. Public Market & Del.*, 130 Wash. 302, 226 P. 1021 (1924); *Manley v. Connolly*, 155 Minn. 343, 193 N. W. 590 (1923).

¹² *Feury v. Ice Cream Co.*, 2 N. J. Misc. R. 1008, 126 A. 462 (1924).

¹³ *Schreiner v. Del., L. & W. R. R.*, 98 N. J. L. 899, 121 A. 84 (1923).

¹⁴ 5 American Jurisprudence 643.

motor vehicle on the public highways to see that it is in reasonably good condition and properly equipped, so that it may be at all times controlled and not become a source of danger to its occupants or to other travelers".¹⁵ More specifically on the facts, the general rule is that one operating a motor vehicle on the public roads must exercise reasonable care to keep the brakes on the vehicle in such condition that it may be controlled at all times.¹⁶ They must be capable of making emergency stops.¹⁷ A review of the cases on the point seems to show that the instant case places Maryland in accord with the holdings of most courts. Pennsylvania has decided that a motorist is under a duty to make a reasonable inspection of the automobile, and only when such reasonable examination fails to disclose defective equipment is he relieved from liability for damages arising from such defects.¹⁸ Most cases hold there is a plain duty on the driver of a motor vehicle to make a reasonable inspection of it or suffer the consequences of any easily discernible imperfection.¹⁹ One could hardly claim that this is placing any undue responsibility on the operator of a motor vehicle. Particularly is this true when one considers the speeds which cars are capable of attaining today. Of course a driver is not to be held for any hidden defects not shown by ordinary care and inspection.²⁰

The cases on the point do not seem to be certain as to whether this duty of inspection lies on the owner or the driver of the vehicle in question or on both. In some the person held liable was the owner as well as the driver and hence the problem was not presented.²¹ Some courts, including the Maryland court in the principal case, have held the driver himself liable for his negligence in driving with defective brakes,²² while still other jurisdictions place the burden on the owner even though the vehicle was in the direct control of a chauffeur or agent at the time of the

¹⁵ HUDDY, *ENCYCLOPEDIA OF AUTOMOBILE LAW* (1931) 127.

¹⁶ *Dostie v. Lewiston Stone Co.*, 136 Me. 284, 8 A. (2d) 393 (1939).

¹⁷ *Ziskovsky v. Miller*, 120 Neb. 255, 231 N. W. 809 (1930).

¹⁸ *Delair v. McAdoo*, 324 Pa. 392, 188 A. 181 (1936).

¹⁹ *Peterson v. Seattle Auto Co.*, 149 Wash. 648, 271 P. 1001 (1928).

²⁰ 42 *Corpus Juris* 894, *Motor Vehicles*, Sec. 596.

²¹ *Foster v. Farra*, 117 Ore. 286, 243 P. 778 (1926); *Owens v. Iowa Co.*, 186 Iowa 408, 169 N. W. 388 (1918); *Ziskovsky v. Miller*, 120 Neb. 255, 231 N. W. 809 (1930).

²² *Landry v. Hubert*, 101 Vt. 111, 141 A. 593 (1928); *Feury v. Ice Cream Co.*, 2 N. J. Misc. R. 1008, 126 A. 462 (1924); *Gilmore v. Caswell*, 65 Cal. App. 299, 224 P. 249 (1924); *Fox v. Barekman*, 178 Ind. 572, 99 N. E. 989 (1912); *Delair v. McAdoo*, 324 Pa. 392, 188 A. 181 (1936).

accident.²³ It is not discernible from the cases whether the owners in the latter group of cases were held liable primarily for the failure to inspect the equipment and provide adequate brakes themselves, or were being charged with their servants' negligence in failing to do so under principles of agency or (possibly) a doctrine of vicarious liability. It is well to note here that one who borrows a car for use in an emergency is not required to search for hidden defects and would not be liable for an injury resulting from the existence of such a defect.²⁴

In the instant case, involving a driver's liability in a strange car, the Maryland court seems to have asked: Did the defendant make any inspection of this car she was driving, and, also, would such inspection have revealed the defective condition? Clearly, from the driver's testimony in the instant case the first was answered in the negative; and the second would seem to have been answered from common knowledge, and was so treated by the Court. The opinion said: "If no test is made, if the brakes are not even tried, the driver cannot rely upon a presumption that the machine is safe. He will not then be excused from liability for the destruction he may cause upon the public highway because he did not know his brakes were bad." The ease and simplicity with which a driver can determine whether his brakes are in order makes it very reasonable to place such duty of inspection on him, as most courts seem to do, especially when he is driving a strange car. If the brakes had worked adequately when reasonably tested or used prior to their first failure, then such action would excuse the driver from liability. However the defendant's words "I had no use for the brakes particularly before that; I mean no hill or incline like that," were construed by the Court to refute any idea that she might have made any preliminary inspection or tested the car's necessary equipment. The Court considered this testimony to mean that no use of the brakes had been made in the previous driving (during which one passenger had alighted), although in the absence of the defendant's own statement it would have been "almost inconceivable" that the brakes

²³ Phillips v. Pickwick Stages, 85 Cal. App. 571, 259 P. 968 (1927); Harden, Inc., v. Harden, 29 Ala. App. 411, 197 S. 94 (1940); Orange Bottling Co. v. Smith, 35 Ga. App. 92, 132 S. E. 259 (1926); Kolbe v. Public Market & Trans. Co., 130 Wash. 302, 226 P. 1021 (1924); Schreiner v. Del., L. & W. R. R., 98 N. J. L. 899, 121 A. 84 (1923); Dostie v. Lewiston Stone Co., 136 Me. 284, 8 A. (2d) 393 (1939).

²⁴ Guile v. Snyder, 165 Ark. 221, 263 S. W. 403 (1924); 42 Corpus Juris 894, Motor Vehicles, Sec. 596.

would not have previously been used, and found adequate or defective.

This appears to be the first case directly on the point of liability for defective brakes in a borrowed car in Maryland and the Court, in arriving at its holding, has established the rule that a person driving a strange car for the first time owes a duty to the public to use reasonable care to see that there are no obvious defects in its mechanism which are apt to cause injury to others. This result is probably wise in that it helps further the purpose of the legislative requirement that all motor vehicles be provided with adequate brakes. For, unless a rigid, expensive inspection system were installed by the state, the provision for good brakes would be most difficult to enforce and of little use to the public. The rule thus supported by reason is within the general authority of the cases decided elsewhere. It does not place an unreasonable burden on drivers, and it is a step in the promotion of public safety without too great an intrusion on any private right. Its warning to all drivers to use care should be observed.