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Carrier's Liability for Injury to Passenger Resulting from Third Party's Act - Pennsylvania Railroad Company v. Cook

CARRIER'S LIABILITY FOR INJURY TO PASSENGER RESULTING FROM THIRD PARTY'S ACT

Pennsylvania Railroad Company v. Cook[1]

Plaintiff was a regular commuter on a train operated by the defendant company between Edgewood Arsenal and Baltimore City. The train made the usual stop at the Biddle Street Station and, while plaintiff was descending the coach steps to get off, the starting signal sounded and the train immediately started forward, throwing plaintiff off the coach steps and down an embankment.

There was no dispute that plaintiff was caused to fall by the sudden starting of the train before all of the

[1] 26 A. (2d) 384 (Md., 1942).

passengers had gotten off. The only evidence as to the premature sounding of the starting signal was the uncontradicted testimony of a witness that he saw a fellow passenger "deliberately pull the cord to go ahead," and then hurry from the train. The flagman of the train testified that he was on the station platform when he heard the two blasts of the whistle, which he knew was the starting signal, and that he immediately ran up the steps of the train and pulled the signal to stop.

All these facts were conceded, and the only question was whether any of defendant's employees were in any way negligent in starting the train. The Court held that there had been no such negligence, and reiterated the general rule that "a carrier is liable for acts of misconduct or improper conduct on the part of its passengers or strangers resulting in injury to a fellow-passenger only in the event that the employees of the carrier knew or, in the exercise of due care, should have known of the imminency of the tort and failed to prevent the occurrence after a sufficient opportunity to do so. The general principle is that a carrier is not bound to anticipate that a passenger will intentionally meddle or interfere with the machinery of the car or train and that if he does, he thereby becomes a trespasser, for whose acts the carrier is not liable, in the absence of any negligence on its part."[2]

This rule has been laid down by a line of decisions in Maryland, beginning with *Tall v. Baltimore Steam-Packet Co.*[3] In this case, two passengers on the defendant's boat quarreled in the captain's presence, and one withdrew to his room, and, without reasonable warning that he would come back armed, he returned with a pistol and attacked his former adversary. In spite of the captain's immediate attempt to stop the accident, the pistol was fired, injuring another passenger. In a suit by the injured passenger against the steamboat company, the latter was absolved of any liability, on the theory that a carrier does not insure the absolute safety of a passenger against assaults by a fellow passenger, but is only required to use all available means to prevent such injury.

In *United Railways and Electric Co. v. State, to use of Deane,*[4] a passenger on defendant's street car was drunk and disorderly and was ejected for assaulting an unoffending passenger, and the conductor afterwards permitted

[2] 10 Am. Jur. 259, Sec. 1441.
[3] 90 Md. 248, 44 A. 1007, 47 L. R. A. 120 (1899).
[4] 93 Md. 619, 49 A. 923, 54 L. R. A. 942, 86 Am. St. Rep. 453 (1901).

him to re-enter the car, whereupon he assaulted and killed another passenger. The Railway was found liable for the passenger's death. This case is distinguishable on its facts from the *Steam-Packet Co.* case. In the latter case, the carrier's employee acted at once to prevent the injury when its imminence became known; in the *Deane* case, the conductor made no such attempt.

The case of *Baltimore and Ohio R. R. Co. v. Rudy*[5] was an action by a passenger against the railroad company for injuries received from a bottle thrown by a fellow passenger who, with others, had for a long time been drinking and behaving in a disorderly manner. The Court, in holding the carrier liable, emphasized the requirement for a finding of liability stated in both the *Tall* and *Deane* cases, *supra,* viz., that "defendant's servants knew, or with proper care could have known, that the tort was imminent long enough in advance of its commission to have prevented it."

In *Hagerstown and Frederick Railway Company v. State, for the use of Cunningham,*[6] and in *Pugh v. Washington Railway and Electric Company,*[7] it was pointed out that, although a carrier of passengers is bound to the highest degree of care, it is *not* an insurer of the absolute safety of its passengers.

In all the Maryland cases just reviewed, the injury was inflicted by the third person's direct assault. The principal case seems to be the first in Maryland where the injury, though proximately caused by a third person's act, was not the result of a personal assault by such person.

The cases of other jurisdictions indicate that the carrier is not liable in either case. In New York, in *Ferry v. Manhattan R. Co.,*[8] it was held that the carrier was not liable for injuries received by a passenger, while stepping from the car to the station platform, because of the premature starting of the train, if the starting signal was given by another passenger who, according to some of the evidence, grabbed the bell rope to steady himself. In Pennsylvania in *Cohen v. Philadelphia Rapid Transit Co.,*[9] it was held that a carrier is not liable to a passenger who is injured, while boarding a car, by the premature starting of the car by an unauthorized fellow passenger.

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[5] 118 Md. 42, 65, 84 A. 241 (1912).
[6] 129 Md. 318, 99 A. 376 (1916).
[7] 138 Md. 226, 113 A. 732 (1921).
[8] 118 N. Y. 497, 23 N. E. 822 (1890).
[9] 228 Pa. 243, 77 A. 500 (1910).

In California, in *Cary v. Los Angeles Ry. Co.*,[10] a street car company was held not liable for injury to a passenger, who is in the act of alighting from the car, caused by the sudden starting of the car in response to a signal given by a fellow passenger, where neither conductor nor motorman had any reason to believe that the passenger would give the signal.[11]

In Massachusetts, the carrier was held liable where a passenger was injured while alighting from a street car which started prematurely on a signal given by another passenger, and it appeared that the same passenger had also given the stopping signal, and that, to the conductor's knowledge, passengers sometimes took it upon themselves to give signals.[12]

In the principal case, the Court discussed at some length the question of the engineer's negligence in obeying the proper signals to go forward. It was pointed out that he was an "extra" taking the regular engineer's place, and was not familiar with the length of time required to discharge passengers at the particular station where the plaintiff was injured. The Court concluded that, in the absence of extraordinary circumstances (and there were none here) the engineer had a perfect right to assume that a signal, when it is one in universal use, was properly given by one with authority to give it. This finding agrees with the views of other jurisdictions. Thus, in *Wagner v. New York City R. Co.*[13] it was held that negligence of an electric street railway could not be predicated upon the unauthorized act of a passenger in signaling the motorman to start the car, while another passenger was in the act of alighting, and that the motorman, in receiving the signal and starting the car, was not guilty of negligence. It should be noted, however, that in such a set of facts the carrier *is liable* if the conductor in charge of the car could, by the exercise of due care and diligence, have countermanded the unauthorized signal in time to have prevented the moving of the car and the resulting injury.

Contrary to popular misbelief, the carrier is *not* an absolute insurer of the safety of its passengers. The mere fact that a passenger on a carrier is injured does not of

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[10] 157 Cal. 599, 108 P. 682, 27 L. R. A. (N. S.) 764, 21 Ann. Cas. 1329 (1910).

[11] According to the note in 27 L. R. A. (N. S.) 764, this position is supported by all of the authorities which have passed upon the question.

[12] Nichols v. Lynn and B. R. Co., 168 Mass. 528, 47 N. E. 427 (1897).

[13] 107 N. Y. Supp. 807 (1907); see also *supra, circa* notes 8-11.

itself raise a presumption of negligence in the carrier. Res ipsa loquitur will, of course, apply where the passenger's injury results from some abnormal condition of actual transportation, and then the carrier will be liable unless it can show that the abnormal condition, such as a broken axle or a defective coach step, proceeded from some source such as unavoidable accident or vis major and is not attributable to the carrier's own acts.[14] But res ipsa loquitur will not apply where the evidence shows that the injury to the passenger might have been caused by other things than the carrier's negligence. Thus, in *Tittlebaum v. Pennsylvania R. Co.*,[15] in an action against a carrier for injuries caused a passenger by pieces of glass which struck her when a car window was broken, it was held "that the doctrine of res ipsa loquitur was not applicable, and that plaintiff had the burden of showing negligence on defendant's part, there being no evidence of any defect in the window or that the accident resulted from any misfeasance of defendant or its employees, or from the passing of a train, and there being evidence that it was caused by a stone thrown by a boy who was in no way connected with defendant." Of more difficulty on the res ipsa loquitur point is the problem of whether the presumption of negligence, once raised, requires the issue of the carrier's negligence to go to the jury, notwithstanding uncontradicted evidence negativing negligence.[16]

But discussion should not go too far beyond the scope of the instant case, which is but a correct application of normal rules to a fact situation new for Maryland.

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[14] Western Md. R. Co. v. Shivers, 101 Md. 391, 61 A. 618 (1905); and other cases.

[15] 167 Md. 397, 174 A. 89 (1934); and other Maryland cases.

[16] Thomsen, *Presumptions and Burden of Proof in Res Ipsa Loquitur Cases in Maryland* (1939) 3 Md. L. Rev. 285, 302; and Note, *Presumption From Derailment as Requiring Submission of Carrier's Negligence to Jury in Action by Passenger, Notwithstanding Uncontradicted Evidence Negativing Negligence* (1923) 23 A. L. R. 1214.