Maryland Law Review

Volume 18 | Issue 1 Article 8

Effect of Intervening Cause on Duty Owed Passenger by Carrier - Jones v. Baltimore Transit Co.

J. M. Roulhac

Effect Of Intervening Cause On Duty Owed Passenger By Carrier

Jones v. Baltimore Transit Co.[1]

Plaintiff was a passenger on a bus of defendant which was proceeding in a northerly direction on St. Paul Street toward the intersection of Preston Street in Baltimore. Plaintiff testified in the court below that she was standing near the driver holding on to a rod, since she intended to get off at Preston Street. She further testified that the speed of the bus was "very fast" or "a little too fast", and that a car pulled in front of the bus. This caused the driver to apply the brakes to avoid a more serious accident. Plaintiff was thrown against the money box and thereby injured. The court below directed a verdict for defendant. On plaintiff's appeal, the Court of Appeals affirmed.[2] The Court rejected plaintiff's theory that by segregating and relying on the testimony concerning the speed of the bus, sufficient negligence might be inferred to at least get the case to the jury on this point. It was stated that, "[n]egligence may not be inferred from general adjectival descriptions alone."[3] Several cases are cited to show that negligence must arise from the facts, not adjectival generalizations.[4] To complete the case against plaintiff, it was said that even assuming the speed of the bus was negligence, plaintiff could not recover, since the act of the car which cut in front of the bus was a superseding or intervening independent cause. Thus, any negligence of the bus driver in speeding could not be the proximate cause of the accident.[5]

The problem which arises in this decision is twofold, the intervening cause and the duty of care owed a passenger by a carrier. The latter is the more difficult to reduce to a legal maxim. In the words of Prosser, "[c]arriers who accept passengers entrusted to their care must use great caution to protect them, which has been described as 'the utmost caution characteristic of very careful prudent men', or 'the highest care consistent with the nature of the under-

[1] 211 Md. 423, 127 A. 2d 649 (1956).

[2] *Ibid.* The Court divided the decision into two segments. The first is outside the scope of this note. The Court discussed the fact that the evidence given by plaintiff was such that the doctrine of *res ipsa loquitur* could not apply, since by her own testimony she had shown that a cause not within the control of defendant might have caused the accident, namely the car that cut in front of the bus.

[3] *Ibid*, 428.

[4] Sonneburg v. Monumental Tours, 198 Md. 227, 81 A. 2d 617 (1951); Charlton Bros. Co. v. Garrettson, 188 Md. 85, 51 A. 2d 642 (1947); Baltimore Transit Company v. Sun Cab Co., 210 Md. 555, 124 A. 2d 567 (1956).

[5] *Supra*, n. 1, 430.

taking'."[6] The Maryland cases seem to accept this definition, with the further proviso that the carrier is not to be considered an insurer, and thus liable for any injury to a passenger, but rather the duty should always be counterbalanced by the other obligation that the carrier owes to its passengers, namely, that of getting them to their destinations quickly and efficiently.[7] But this duty which the carrier owes to its passengers for safe passage is greater than the duty owed to third persons.[8] Perhaps it is justifiable to say with Prosser, "[w]hat is required is merely the conduct of the reasonable man of ordinary prudence under the circumstances, and . . . the greater responsibility is merely one of the circumstances, demanding a greater amount of care".[9] In this light, consider the Court's condemnation of general adjectival descriptions in the instant case. This approach was reiterated in the recent case of *Smith v. Baltimore Transit Co.*,[10] where a refusal to submit to the jury the question of whether a sudden start was negligence was affirmed.

The second aspect of the problem, that of the superseding or intervening independent cause is more susceptible of definition. The Restatement of Torts gives a general description of an intervening force as "one which actively operates in producing harm to another after the (original) actor's (negligent) act of or omission has been committed".[11] Thus, any act by a third party subsequent in time to the original actor's act may be thought of as, at least, a *concurring* cause of harm. But merely because there is such a concurring cause present, the original tortfeasor is *not* relieved of his liability if his act remains the proximate cause of the harm.[12] The Restatement further says that a *superseding* cause is "an act of a third person or other force which by its intervention *prevents* the actor from being liable for harm to another which his antecedent negligence is a *substantial* factor in bringing about".[13] The

---

[6] PROSSER, HANDBOOK OF THE LAW OF TORTS (1941) 256-7.

[7] Pugh v. Wash. Rwy., Etc., Co., 138 Md. 226, 113 A. 732 (1921); Smith v. Transportation Co., 172 Md. 42, 191 A. 66 (1937); Brooks v. Sun Cab Company, 208 Md. 236, 117 A. 2d 554 (1955); Smith v. Baltimore Transit Co., 211 Md. 529, 128 A. 2d 413 (1957).

[8] Sun Cab Co. v. Reustle, 172 Md. 494, 192 A. 292 (1937).

[9] *Op. cit., supra*, n. 6, 257.

[10] *Supra*, n. 7. However, the case went to the jury on the question of the driver's duty after the collision, and the jury found for the defendant.

[11] Vol. 2 (1934), §441(1). Parenthetical material supplied.

[12] Holler v. Lowery, 175 Md. 149, 162, 200 A. 353 (1938).

[13] *Op. cit., supra*, n. 11, §440. Italics supplied. Comment *b* says:

"A superseding cause relieved the actor from liability, irrespective of whether his antecedent negligence was or was not a substantial factor

problem is to distinguish between a *concurring* cause on the one hand, and a *superseding* cause on the other. Several factors may be involved in this characterization.[14] The spirit of the Restatement provision has been incorporated into the Maryland law. Perhaps the leading case is *Sun Cab Co. v. Faulkner,*[15] where there was evidence that defendant's cab was travelling at an excessive speed when it collided with another vehicle proceeding unlawfully through a red light at a crossing. The Court said, "[i]f negligence is found in the rate of speed at which the Sun cab was being driven, that fact alone does not, of course, answer the question of liability. The negligence must have been the cause of the collision."[16] The Court then found that the unexpected violation of the traffic signal by the other car was the real cause of the accident, and therefore there could be no legal responsibility for the harm on the Sun Cab's part, and it followed that the passenger could not recover from the Sun Cab Company. In *Monumental Motor Tours, Inc. v. Becker,*[17] the Court, citing the *Faulkner* case said, "[i]n that case, as in this, the plaintiff was a passenger of the defendant, but that fact does not prevent the application of the rule that the negligence of which plaintiff complains must be the proximate cause of the injury for which he sues."[18] Again, in *Belle Isle Cab Co. v. Pruitt,*[19] recovery

in bringing about the harm. Therefore, if in looking back from the harm and tracing the sequence of events by which it was produced, it is found that a superseding cause has operated, there is no need of determining whether the actor's antecedent conduct was or was not a substantial factor in bringing about the harm."

[14] *Ibid,* §442:

"The following considerations are of importance in determining whether an intervening force is a superseding cause of harm to another:

(a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;

(b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;

(c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is an act done as a normal response to such a situation;

(d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;

(e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;

(f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion."

[15] 163 Md. 477, 163 A. 194 (1932).

[16] *Ibid,* 479.

[17] 165 Md. 32, 166 A. 434 (1933).

[18] *Ibid,* 35.

[19] 187 Md. 174, 49 A. 2d 537 (1946).

by plaintiff passenger was denied where the Court was unable to find that the speed of the cab contributed to, or was the proximate cause of the accident.[20]

The instant case seems to be clearly in line with prior Maryland decisions which have been concerned with superseding causes and the duty owed a passenger by the carrier. The primary determination that must be made is whether the intervening force is in fact superseding. If it is, the original actor is released from his antecedent negligence. This effect is perhaps most strikingly seen where the carrier is involved in an accident, and the other party to the accident, *i.e.*, the intervening force, has violated the Boulevard Stop Law.[21] In the recent case of *Sun Cab Company, Inc. v. Cusick*,[22] it was held that where defendant's cab, straddling the center line, was struck by a car which violated the Boulevard Law, the fact that the cab was *"prima facie"*[23] negligent would not ordinarily be the proximate cause of the accident. In other words, the negligence of the driver in violating the Boulevard Law operated to cut off the prior negligence of defendant toward his passenger. This result seems clearly justifiable where there was no indication that the negligence of defendant cab, in driving to the left of the center line, would have resulted in harm to plaintiff passenger, except for the intervention of the intervening force. The cause of plaintiff's injury was the violation of the Boulevard Law by the third party; probably

[20] In this line see Koester Bakery Co. v. Poller, etc., 187 Md. 324, 50 A. 2d 234 (1946), where on facts very similar to those of the instant case, the Court denied recovery, saying at 332:

> "The cause of the accident was clearly the unexpected, and unforeseeable, entry of the truck upon the tracks at a point where the collision could not have been avoided even if the street car had been travelling at a speed of twenty-five miles per hour. Under such circumstances it cannot be inferred that the higher speed assumed was a contributing cause. . . . [I]t was held that excessive speed is not a concurrent cause, where the primary cause is the unforeseeable, negligent act of a third party, *and* it appears that the accident would have happened regardless of the excessive speed. Whether a lesser injury would have resulted from an emergency stop at thirty miles per hour, than from an emergency stop at forty miles per hour, is a matter of pure speculation, even if it be assumed that the car could have been stopped in a shorter distance at the slower speed."

[21] Md. Code (1951) Art. 66½, §198:

> "(Vehicle Entering Through Highway or Stop Intersection.)
> (a) The driver of a vehicle shall come to a full stop as required by this Article at the entrance to a through highway and shall yield the right of way to other vehicles approaching on said through highway."

[22] 209 Md. 354, 121 A. 2d 188 (1956).

[23] *Ibid*, 360-361, to the effect that the person whose driving to the left of the center lane in violation of Md. Code (1957 Supp.) Art. 66½, §182, causes an accident is burdened with proving that his driving to the left was justified. Accord: Cocco v. Lissau, 202 Md. 196, 95 A. 2d 857 (1953) and Campbell v. State, 203 Md. 338, 100 A. 2d 798 (1953).

no accident would have happened had this party not ignored the stop sign. It would be unjust to hold the carrier liable for action which normally would have failed to produce any injury to plaintiff. With the current development of the Boulevard Law in Maryland which gives the favored driver an almost absolute right to proceed,[24] it is believed that a carrier, in the position of the favored driver with respect to a third party who has violated a stop sign, will likely be relieved of any liability to a passenger for its antecedent negligence.

However, the above theory can not be reduced to an automatic formula, as the Court pointed out in *Sun Cab Co., Inc. v. Hall.*[25] There defendant's negligence consisted of a failure to see a car approaching an intersection because of inattention on the driver's part. Plaintiff passenger saw the approaching vehicle, which, though obliged to stop at the intersection, failed to do so. The cab company was still held liable to its passenger. The Court found that had the driver been paying attention, he would have seen the other car in time to stop and thereby avoid the accident.[26] Perhaps the result in the *Hall* case may be reconciled with the *Cusick* case, on the theory that the Court is applying an interpretation of the last clear chance doctrine; that if defendant's driver had been paying attention, he would have had the last chance to avoid the accident. But this is not the usual application of this doctrine.[27] More difficult to reconcile is *Valench v. Belle Isle Cab Co.*,[28] where plaintiff passenger was allowed to recover when defendant cab started across an intersection upon receiving the green light without having made sure that the intersection was clear.

---

[24] 17 Md. L. Rev. 68, 73 (1957).

[25] 199 Md. 461, 86 A. 2d 914 (1952).

[26] This holding is consistent with the Koester case, *supra*, n. 20. The criterion for holding the original actor liable, is that the accident would have occurred even without the negligent act of a third party. Whereas in Koester, there was no indication that the speed of the street car would have caused an accident without the intervention of the truck, in the Hall case, the driver's inattention could have caused the accident independently of the car which disobeyed the stop sign.

[27] This doctrine usually is applied in the contributory negligence field. See PROSSER, HANDBOOK OF THE LAW OF TORTS (1941), 408:

> "In nearly all jurisdictions the strict rules as to the defense of contributory negligence have been modified by the doctrine of last clear chance. This doctrine, which usually is justified only by vague statements in terms of 'proximate cause,' places its emphasis upon the time sequence of events, and holds the defendant liable if, immediately prior to the harm, he has the superior opportunity to avoid it.
>
> * * * * * *
>
> "The doctrine is not recognized by most courts:
>
> d. Where both parties are merely inattentive."

[28] 196 Md. 118, 75 A. 2d 97 (1950), noted, 13 Md. L. Rev. 350 (1953).

The driver's view was obscured by a streetcar, and the cab was struck on the blind side by a car that had either run the light, or had been caught in the intersection when the light turned red. As was pointed out in the MARYLAND LAW REVIEW,[29] the Court's treatment of the case was somewhat cursory, but the fact remains that the carrier cannot always depend on being the favored vehicle to relieve it of its duty to the passenger. The actor may be required to anticipate and guard against occasional negligence on the part of others.[30] But such a standard is so vague that it may hardly be called a standard at all.[31]

The essential consideration is to determine whether the intervening force is concurring or superseding. If it is the latter, further inquiry becomes unnecessary, since the legal effect of a superseding cause is to cut off liability for antecedent negligence by the original actor. However, if the Court finds that the intervening force is only a concurring cause, the prior negligence of the original actor remains a contributing factor to plaintiff's injury and liability should be accordingly affixed. Thus, it is believed that the effect of an intervening force in a carrier-passenger case is not essentially different from that in the non-carrier situation. The standard of care due the passenger is immaterial on the question of whether the intervening force is to be characterized as superseding or concurring. If the intervening force is found to be concurring, the Court will apply the usual standard of care required of a carrier.

J. M. ROULHAC

---

[29] *Ibid.*

[30] 2 RESTATEMENT OF THE LAW OF TORTS (1934) §302, comment (1):

"The actor is often required to anticipate and provide against that occasional negligence which is one of the ordinary incidents of human life and is therefore to be anticipated, . . ."

[31] Compare the result in the Cusick case, *supra*, n. 22, with Vadurro v. Yellow Cab Co. of Camden, 6 N. J. 102, 77 A. 2d 459 (1950), where the defendant's cab was struck by a station wagon while defendant was over the center line and was knocked across the opposite traffic lane. While the cab was in this position, it was struck by another car which ignored warning flares and a police car called to the scene. Some 3 to 5 minutes separated the two accidents, but the Court still held the defendant cab company liable for the injuries suffered by the plaintiff passengers, since the defendant's wrongful act put the passengers in danger to begin with, and the causal connection between defendant's negligence and the passengers' injuries was unbroken.