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Automobiles: Failure to Comply with Statute Requiring a Driver's License as Evidence of Negligence in a Collision

Vincent D. Hennessey Jr.

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RECENT DECISIONS

Automobiles—Failure to Comply with Statute Requiring a Driver's License as Evidence of Negligence in a Collision.—Defendant was operating an automobile owned by another, without a driver's license. The automobile collided with a bus which was making a left turn at an intersection. In the subsequent action the court affirmed a finding for the plaintiffs, stating; "Although there was no direct evidence as to the movements of the automobile before the collision, the fact that Godfrey (the defendant) was operating it without being licensed to do so was some evidence that he was operating it negligently. . . . The manner of operation of the automobile could be found to have had causal relation to the collision." *Keeler v. Godfrey*, 308 Mass 573, 33 N.E. (2d) 265 (1941).

The court in the *Keller* case, in holding that a mere failure to have a driver's license may be said to be negligence, seems to disregard the fundamental requirement of causal connection between an injury and alleged negligence, as set forth in other decisions of the same jurisdiction. The public policy in Massachusetts in regard to the operation of motor vehicles on the highways seems to have been expressed in a case, not mentioned in the principal case, where plaintiff brought action for damages sustained when an automobile which one of them was driving collided with a truck owned by the defendant and operated by his employees, who did not then have a license to operate motor vehicles in the state. The court therein said, "Operation of an automobile on the public ways by a person who is not licensed as required by statute, is a crime, and the violation of the statute is evidence of negligence as to all consequences that the statute was intended to prevent." *Watson v. Forbes*, 307 Mass. 383, 30 N.E. (2d) 228 (1940). But even in the *Watson* case it was held that the evidence becomes material only if there is causal connection between the violation of the statute and the injury that results in the course of the violation.

The Massachusetts statutes in requiring a driver's license merely provide that no person shall operate a motor vehicle upon any way unless licensed to do so. 3 Annotated Laws of Massachusetts, c. 90, Sec. 10. The statutes of the several states which require a driver's license almost unanimously contain a like provision, stated in the same general way, and do not make any other provision or further requirement. Some of the particular state statutes will be cited in the following discussion.

The weight of authority, according to the treatment given it by one text writer, as to liability based on failure to have a driver's license when one is required by law, is that it is not a bar to an action for personal injuries or a defense in such actions. 2 Berry, *Law of Automobiles* (7th ed. 1935) sec. 2.261. The absence of a driver's license may be proper evidence, but before it can afford a basis of liability it must be shown to have been a contributing cause to the injury. 12 *Cyclopedia of Automobile Law* (9th ed. 1932) 484, 485; *Prichard v. Collins*, 228 Ky. 635, 15 S.W. (2d) 497 (1929), as explained in *Moore v. Hart*, 171 Ky. 725, 188 S.W. 861 (1916). Even in Massachusetts it has been held that the absence of a license, though admissible as evidence of negligence, does not establish liability as a legal result. *Kenyon v. Hathaway*, 274 Mass. 47, 174 N.E. 463 (1931). The court seems to have entirely overlooked this point in deciding the principal case.

Cases in other jurisdiction, as well as other cases in Massachusetts, almost unanimously require a causal connection to be shown between the lack of the driver's license and the injury complained of. One case goes so far as to limit

the legislature's power to create a presumption of negligence from a failure to obtain a driver's license. In this case, an automobile passenger brought action against a truck owner for injuries sustained when the truck and automobile collided. The driver of the car in which the plaintiff was riding when the collision occurred did not have an operator's license. A statute provided, "If any driver involved in any accident resulting in any damage whatever either to person or property . . . shall have failed to procure (an) operator's license . . . he shall be deemed prima facie negligent in causing or contributing to cause such accident." Ky. Stat. (1936) sec. 2739-62. The court declared that the mere failure to secure a license could not be stated by statute to be prima facie evidence of negligence. It is incompetent for legislative bodies to prescribe a conclusive presumption; and the right to prescribe a rebuttable one is qualified to this extent:—prescribed facts for creating the prima facie presumption shall have a natural and rational evidentiary relation to, and a logical tendency to prove, the principal fact. *Tipton v. Estill Ice Co.*, 279 Ky. 793, 132 S.W. (2d) 347 (1939). It has also been held in Massachusetts that lack of an operator's license is evidence of negligence, but is not conclusive as to the fact. In this case where an action was brought for injuries sustained by the driver of the automobile and the occupants in a collision of the automobile with a parked truck, the driver of the automobile failing to have an operator's license at the time of the collision, it was held that negligence consisting in whole or in part of violation of the law, like other negligence, is without legal consequence unless it is a contributing cause of the injury. *Price v. Pearson*, 301 Mass. 260, 16 N.E. (2d) 855 (1938). A case indicating further that failure to have an operator's license is not conclusive evidence of negligence is one in which there was action to recover for death caused by an automobile collision. Defendant's loaded truck was driven by his grandson, who possessed a Rhode Island driver's license, but had no Massachusetts license. The court held that failure to comply with the law (requiring a Massachusetts driver's license) is evidence of negligence of the operator to be considered by the jury with other evidence tending to prove negligence. *Kenyon v. Hathaway*, *supra*. Many other cases decided by this same jurisdiction reiterate the rule that operating a motor vehicle without a driver's license is only evidence of negligence; see, for example, *Simon v. Berkshire Street Ry. Co.*, 298 Mass. 454, 11 N.E. (2d) 485 (1937).

The causal connection between the injury complained of and the alleged negligence required by most jurisdictions in order to have actionable negligence must be present whether the lack of a driver's license is interposed by the adverse party against 1) a defendant driver, 2) a plaintiff driver or 3) a plaintiff passenger in a car driven by an unlicensed operator. A case in the first class above mentioned was an action by a plaintiff for injuries caused by a collision with an automobile driven by defendant driver who did not have a drivers license. It was held that the failure to have a driver's license, in violation of a statute, is not actionable negligence when there is no causal connection between the negligence as alleged in violating the traffic ordinances and the collision causing the injuries sued for. *Aycock v. Peaslee Gaulbert Paint & Varnish Co.*, 60 Ga. App. 897, 5 S.E. (2d) 598 (1939). In a case where defendant, a Pennsylvania-licensed driver, did not have a New York driver's license and drove an automobile in violation of a statute prohibiting the operation of automobiles by persons under 18 years of age, it was said that the violation of the statutory protective requirement is negligence, yet such violation must be a causal factor of the injury, either to be a basis of recovery to the injured or to constitute contributory negligence on the part of the violator. *Plunkett v. Heath*, 1 N.Y.S.

(2nd) 778 (1938). In an Oregon case the court stated that the defendant was not negligent because there was no causal connection between the accident and the driver's failure to have a chauffeur's license. The lack on his part was not the proximate cause of the plaintiff's injuries. *Halsan v. Johnson*, 155 Ore. 583, 65 P. (2d) 661 (1937). In this case, the driver did have a driver's license, but the court in no way indicated that the decision would be any different even if the operator had had no operator's license of any sort. In Missouri, it has been held that the charge that a chauffeur had no license was wholly irrelevant, since it had no causal connection with the accident concerned. *Faust v. East Prairie Milling Co.*, 20 S.W. (2nd) 918 (Mo. App. 1929).

Mere want of license having no connection with an accident, would not preclude the operator of a motor vehicle as a plaintiff from recovery. This doctrine is stated in *Price v. Pearson*, *supra*, see also *Bourne v. Whitman*, 209 Mass. 155, 95 N.E. 404 (1911). In an Iowa case, the plaintiff brought action to recover damages alleged to have been caused by the negligent parking of defendant's truck on a public highway. A statute provided that no person should drive any motor vehicle upon an Iowa highway unless such person had a valid driver's license. Ia. Code (1939) Chap. 231.1, sec. 5013.01. The accident causing the damages of which the plaintiff complained occurred while he was operating his automobile without a driver's license. The court declared that the mere fact that the operator of a motor vehicle does not have a license will not bar a recovery for injuries sustained through this negligence unless there is a causal relation between his failure to comply with the law and the resulting injuries. *Ruckman v. Cudahy Packing Co.*, 300 N.W. 320 (Ia. 1941).

Causal relationship is also required between the injuries for which the action is brought and the violation of a statute in failing to have a driver's license, to preclude from recovery a plaintiff who is injured in an automobile in which plaintiff is riding, which automobile is driven by an unlicensed operator. *Strandt v. Cannon*, 29 Cal. App. (2d) 509, 85 P. (2d) 160 (1939). Where the driver of an automobile in which the plaintiff's intestate was riding was not licensed, deceased being killed when the automobile was struck by defendant's train, it was held by the court that a collateral unlawful act, not contributing to the injury, will not bar recovery, nor will the fact that the operator of an automobile had no license, as required by statute, bar a recovery for an injury, where such failure had no causal connection with the injury. *Rose v. Pennsylvania R. Co.*, 106 N.J.L. 536, 148 Atl. 741 (1930). So also in Iowa where the driver of the car in which the plaintiff was riding did not have a driver's license as required by law, it was held that before a violation of the statute will preclude recovery, causal connection must exist between the unlawful act and the injuries complained of. *Schuster v. Gillispie*, 217 Ia. 386, 251 N.W. 735 (1933). To the same effect, even if failure to have a license constitutes negligence per se, see *Jones v. Brookfield Tp.*, 221 Mich. 235, 190 N.W. 733 (1922).

Although definitely appearing in the minority, some courts hold that failure to have a driver's license is not even negligence. In some instances, perhaps, the reason for this conclusion is the wording of the statute requiring a driver's license, or the absence of any such statute. One court has said that it could not see how lack of an operator's license in itself could be a proximate cause of an injury. "Negligence cannot be predicated upon the mere lack of . . . an operator's license." *Opple v. Ray*, 208 Ind. 450, 195 N.E. 81 (1935).

The conclusion reached in *Ross v. Pennsylvania R. Co.*, *supra*, that non-observance of a statute requiring a driver's license is no evidence of the driver's

inability to operate a motor vehicle, seems logical. This has been held in several states. For example, where the statute provided, "No person shall drive any motor vehicle upon a highway unless he has been licensed as an operator or chauffeur, or has been granted a temporary instruction or driver's permit by the "motor vehicle division," Ariz. Rev. Code (1928) sec. 1654, it was held that the lack of such a license would be no evidence whatever that the driver was not a capable, skilled and safe one. *Lutfy v. Lockhart*, 37 Ariz. 488, 295 Pac. 975 (1931). Perhaps due to the apparent policy of the state in regard to the operation of motor vehicles, the Massachusetts court says on this point that, although the operation of an automobile is in itself unobjectionable, failure to have a license is evidence of negligence in reference to fitness to operate a car, and to skill in the actual management of it. *Bourne v. Whitman*, *supra*.

Some courts while conceding that a mere violation of the statute requiring a driver's license is not negligence per se, have held that it is an 'incident of negligence.' *Renner v. Martin*, *supra*. Other courts have held that failure to have a driver's license is immaterial. For example, the fact that the driver of the truck in which the plaintiff was riding failed to be licensed was immaterial, in an action by plaintiff against the driver of another automobile. *Prichard v. Collins*, *supra*; see also, *Mitrovich v. Pavlovich*, 114 P. (2nd) 1084 (Nev. 1941); *Moreau v. Garritson*, 166 So. 660 (La. App. 1936). The negligence of the operator is to be determined by the facts existing at the time of the accident, and not upon whether or not the operator has a driver's license. *De Vite v. Connecticut Co.*, 112 Conn. 670, 151 Atl. 320 (1930). To the same effect, *Strandt v. Cannon*, *supra*. Although the violation is not evidence of negligence, it has nevertheless been held by one court to be an independent wrong precluding recovery. *Johnson v. Boston & M. R. R.*, 83 N.H. 350, 143 Atl. 516 (1928).

It is provided in the Wisconsin statutes that, "No person except those herein-after expressly exempted shall operate any motor vehicle upon a highway in this state unless such person has a valid license issued under the provisions of this section." Wis. Stat. (1941) sec. 85.08(3). There are no Wisconsin cases which can really be considered as decisive of whether a violation of this statute will influence recovery in an action arising from injuries suffered in an automobile accident. However it is probable that this jurisdiction would conform to the weight of authority in requiring some causal connection between the failure to have a driver's license and an injury complained of, as determined by the general rules laid down in *Osborne v. Montgomery*, 203 Wis. 223, 234 N.W. 372 (1931). For liability to result, in an automobile case as in other tort actions, causal relation must exist between the negligent act and the injury complained of.

If a court wishes to impose liability or preclude recovery for failure to comply with a licensing statute, an entirely different approach to the problem, and a seemingly more logical reason than that adopted by the Massachusetts court, in that which has been adopted by some of the courts, such as New Hampshire. In considering such a statute this court said, "A licensing statute creates a new standard of conduct. It makes wrongful an act 'which would not have been a legal fault per se but for the legislative declaration making it so.' By it a driver is classified as unfit not because of the way he operates the car under his control, but 'because he has not taken the prescribed method to establish his fitness in advance.'" Thus the legislature in enacting the licensing statute indicated its intention to impose the civil liability which is thereby created upon only the particular individual who is personally guilty of violating its terms. *Bowdler v. St. Johnsbury Trucking Co.*, 90 N.H. 68, 4 A. (2d) 871 (1939).

VINCENT D. HENNESSEY, JR.