Torts: Assumption of Risk by Patron at Ice Hockey Match

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Torts — Assumption of Risk by Patron at Ice Hockey Match — Plaintiff, a patron at an ice hockey match, brought a negligence action to recover damages for injuries sustained when struck by a flying puck. Defendant owned the indoor arena, which it had leased for the past twenty years to private concerns. These lessees promoted ice hockey games for a profit during the winter months. Plaintiff paid the general admission fee. There were no reserved seats at the hockey games and each spectator could elect to sit either behind the goals at each end of the rink or along the sides of the rink. Plaintiff selected a seat along the side of the rink. The rink of artificial ice was enclosed by a wooden fence or “dash” four feet in height. The seats behind the goals were further protected by wire screening ten to twelve feet in height, because in shooting for the goals the players were more apt to raise the puck from off the surface of the ice than at other times during the game. During the progress of the game the puck, a hard rubber disk one inch thick and three inches in diameter, was lifted from the ice and, after clearing the four foot dash, struck the plaintiff. Plaintiff had attended other ice hockey games at defendant’s arena and was generally familiar with how the game was played. Held: that plaintiff assumed the risk of injury from the flying puck while attending the hockey game as a spectator, where she was familiar with the general purpose of the game and with the surroundings in the arena where the game was played. Modec v. City of Eveleth, 29 N.W.(2d) 453 (Minn., 1947).

The court in the principal case reasoned that in Minnesota ice hockey is played to such an extent and its risks are so well known to the general public that a spectator will be held as a matter of law to have knowledge of the risk of injury from a flying puck to the same extent that a spectator at a baseball game is held to have knowledge of the risks incident to that game. This rule of law and line of reasoning was first enunciated by the New York Supreme Court, which, in ruling on a similar fact situation, stated:1

“No case has been found which passes upon this exact situation. There are, however, a number of cases where spectators at baseball games have been injured by batted balls coming into the stand. The concensus of opinion in those cases is that there is no liability; that the proprietors of a baseball park are not obliged to screen all the seats; that spectators occupying seats that are not screened assume the risk incident to such use... The baseball cases seem to present the same legal question that confronts us here.”

Thereupon the New York court dismissed the complaint. Later in the same year, in an action brought by a spectator who was struck by a

flying puck while attending her first hockey game at which all the protected seats behind the goals had been sold out, the same court in a three to two decision ruled.\(^2\)

"It seems to me that appellant in attending a hockey game occupied precisely the same status as a spectator at a baseball game and that the same rules should be applied in each instance. There was no obligation on the part of respondents to protect appellant against a danger incident to the entertainment which any reasonable spectator could foresee and of which she took the risk. The risk of being hit by a baseball or by a puck at a hockey game is a risk incidental to the entertainment and is assumed by the spectators. Any other rule of law would place an unreasonable burden upon the operator of a ball park or hockey rink... It is argued that this was the first time she had ever attended such a performance. That does not change the rule of liability so far as respondents are concerned. Certainly it was not incumbent upon them to make inquiry of each patron on entering the premises as to whether or not he or she had ever witnessed a like performance."

Prior to the Minnesota decision in the principal case, only one other jurisdiction supported the New York rule. In a Canadian case, a minor was denied damages for injuries sustained when struck in the face by a flying puck when it was shown that he, the plaintiff, was a hockey player and was fully cognizant of the danger of sitting along the sides of the rink, and elected to sit there even though there were vacant seats in the sections protected by the screening behind each goal. The court stated that the spectator must be held to have a thorough knowledge of the risks assumed by the public in witnessing games of ice hockey and the protection customary in such games.\(^3\)

Although the case of *Ingersoll v. Onondaga Hockey Club Inc.*\(^4\) is very often cited for its dictum concerning assumption of risk by spectators at baseball parks, it is not the rule applicable to patrons at hockey rinks in the majority of jurisdictions. One law review writer criticizes the New York rule on the ground that while common knowledge of ice hockey and of it incidental dangers might suffice, per se, to absolve the owner of the rink of negligence and to absolve the spectators of the charge of contributory negligence, it would not, however, "suffice for denial of relief on grounds of voluntary assumption of risk, as this latter doctrine is commonly interpreted."\(^5\) The Massachusetts court expressly refuted the New York rule and stated: "Cases as they arise must be decided by the application of general principles to the particu-

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\(^5\) 10 So.Calif.L.Rev. 67 at 77 (1936).
lar facts shown and not by arbitrary classification according to the names of various games.” The court reasoned that a patron attending his first hockey game might well believe that the four foot dash offered adequate protection, and that if it did not he could assume that the proprietor would have provided screening along the sides of the rink similar to that which was provided behind each goal at the ends of the rink. Four years later the Massachusetts court affirmed its previous decision in an action brought by a spectator who was struck by a flying puck as he walked along the aisle to reach the rest room. In that action it was shown that the flying puck not only cleared the four foot dash, but also two rows of box seats and another five foot fence before striking the plaintiff. 

The Rhode Island court refused to follow the New York rule on three principal grounds: (1) The three to two decision of the Appellate Division of the New York Supreme Court had never been reviewed by the New York Court of Appeals, whereas the Massachusetts rule was handed down by the highest court of that jurisdiction; (2) Baseball is the national pastime and therefore the community in general may be presumed to know the dangers incident to the playing of that game, whereas ice hockey is of more recent origin and is less widely known as a sport and therefore the dangers thereof have not had time to become a matter of common knowledge in the community; (3) Baseball is fundamentally different from ice hockey in that the baseball is pitched through the air to be batted out towards the playing field on the ground or in the air, according to the skill of the batter or chance, while in ice hockey the puck is supposed to be driven along the ice towards the goal at either end of the hockey rink. The California court partially followed the reasoning of the Rhode Island court when it stated:

“The rule which has apparently uniformly been applied to baseball cases is, we believe, inapplicable to ice-hockey games, for the reason that the average person of ordinary intelligence in this country is familiar with the game of baseball, and it is reasonable to presume that such person appreciates the risk of being hit by a pitched or batted ball without being specifically warned of such danger. Hence, a spectator at this nationally known game may ordinarily be held to assume such a risk. However, the average person does not have the same knowledge respecting ice hockey or the risk of being hit by a flying puck while observing such a game.”

Three years later a California court ruled that it was a question of fact for the jury to decide whether an owner of a rink was negligent in not posting signs or in any other way warning the spectators of the danger from flying pucks, or in not installing screening along the sides of the rink.\textsuperscript{10} In Nebraska a spectator who voluntarily chose a seat along the side of the rink was held not to have assumed the risk of being hit by a flying puck as a matter of law. It had been shown that the injured spectator had attended hockey games during the previous season but the court ruled:\textsuperscript{21}

"In view of the novelty of the game of hockey in this state, and the acquaintanceship and experience of appellee with the game and its incidental dangers. . .we feel that the question of her knowledge of the game and its dangers, and her entire conduct as it related to the issue of dereliction of duty on her part is a matter for the consideration of the jury."

Some of the courts which follow the majority rule intimate that when the sport of ice hockey attains state-wide prominence in their jurisdiction, the court might then support the rule followed in New York and Minnesota. Professional ice hockey made its debut in the United States about 37 years ago. After intensive research one authority concludes: "The first game of ice hockey, which is definitely called Ice Hockey, was played in Montreal, March 3rd, 1875, at the Victoria Skating Rink."\textsuperscript{12} A promoter endeavored to introduce the sport into the United States as early as 1897, and although an indoor rink for hockey was built in Cleveland around 1905, it was not until 1911, when the Pacific Coast League was organized, that professional hockey was introduced into the United States. "But hockey remained rather obscure in the United States until Boston, and then New York, acquired franchises in the National League and international play started, since which time the arenas have bulged with capacity crowds."\textsuperscript{13} Boston received its franchise in the National League in the winter of 1924-25. Some high schools and colleges in the northern states treat ice hockey as a major sport. Hockey is also a popular sport for boys, to be played out of doors in those states where long, cold winters prevail.

It would seem that the New York rule is too severe when it applies the doctrine of assumption of risk as a matter of law to a spectator who is attending his first hockey match. However, previous attendance at hockey games is not a good criterion when to apply the doctrine, for expert testimony differs as to the frequency with which a puck is raised off of the ice and sent flying among the patrons during the

\textsuperscript{10} Thurman v. Clune, 51 Cal.App.(2d) 505, 125 Pac.(2d) 599 (1942).
\textsuperscript{11} Tite v. Omaha Coliseum Corp., 144 Neb. 22, 12 N.W.(2d) 90, 149 A.L.R. 1164 (1943).
\textsuperscript{12} Menke, Encyclopedia of Sports, p. 371 (1944).
\textsuperscript{13} Ibid., p. 374.
course of a game. During some games the puck never flies over the dash, but during other games this accident might happen four or five times during the course of play. The New York and Minnesota courts reason that any danger resulting from the playing of ice hockey is open and visible, and a spectator need not sit through even one game to become cognizant of those dangers. The Minnesota decision adds weight to the New York rule, but it may reasonably be assumed that the majority rule will continue to be followed in those jurisdictions in which the sport is less widely known and less extensively played because of shorter winters and/or inadequate arena facilities for indoor rinks. Ice hockey is receiving wide publicity for being one of the fastest sports known, and in view of this increased publicity and the general popularity of all sports during the present decade, the northern states, including Massachusetts and Rhode Island which at present support the majority rule, might be expected to adopt the decision enunciated by the Supreme Court of Minnesota in the principal case.

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