Torts - Negligence - Automobiles - Limitation of Wisconsin Doctrine that Motor Vehicle Guest Assumes the Risk

Albert F. Beck

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol25/iss2/13

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
Torts—Negligence—Automobiles—Limitation of Wisconsin Doctrine that Motor Vehicle Guest Assumes the Risk.—The plaintiffs were guests of the defendant, an experienced driver. The defendant was driving on a straight road at a speed of about forty miles per hour, which speed was slightly increased prior to the accident. Making a careless observation as to an approaching car, which was a half mile distant, the defendant suddenly swerved to the right. The car went into the ditch and traveled along it until it struck a culvert, injuring the plaintiffs. Held, judgment for the plaintiffs, because the guest does not assume the risk of the host's faulty judgment based upon faulty premises proceeding from careless observation or inattention. *Rudolph v. Ketter*, 233 Wis. 329, 289 N.W. 674 (1940).

Just as a land owner owes a licensee merely the duty to warn of known dangers on the premises, *Greenfield v. Miller*, 173 Wis. 184, 180 N.W. 834 (1921), so the person gratuitously supplying a chattel for the use of others owes the bailee or licensee only a duty to warn of known defects which might constitute a danger to the licensee. *O'Shea v. Lavoy*, 175 Wis. 456, 185 N.W. 525 (1921). Another way of putting this doctrine is that the licensee takes the chattel as it is, with its defects, except such defects which are known to the owner.

In most jurisdictions, the automobile guest takes the car as it is with defects not known to the driver. *O'Shea v. Lavoy*, supra. Under the doctrine of assumption of the risk as established in Wisconsin, the guest also assumes the risk of danger incident to the skill, competency, and experience of the driver when known to the guest. *Cleary v. Eckart*, 191 Wis. 114, 210 N.W. 267 (1926). The guest also assumes the risk of danger incident to the driver's usual and customary habits with which the guest is familiar. *Olson v. Hermansen*, 196 Wis. 614, 220 N.W. 203 (1928); *Boureston v. Boureston*, 231 Wis. 666, 285 N.W. 216 (1939), and also his known eccentricities of driving. *Young v. Nunn*, *Bush and Weldon Shoe Company*, 212 Wis. 403, 249 N.W. 278 (1933). But the guest does not assume the risk of the driver's sudden departure from his customary habits of safe driving when the new course of driving has not persisted long enough to give the guest opportunity to protest. *Groh v. W. O. Krahn, Inc.*, 223 Wis. 662, 271 N.W. 374 (1937); *Webster v. Krembs*, 230 Wis. 252, 282 N.W. 564 (1939); *Helgestad v. North*, 233 Wis. 349, 289 N.W. 822 (1940). However, he assumes the skill and competency of the driver, even though the latter's skill and competency are unknown to him. *Harter v. Dickman*, 209 Wis. 283, 245 N.W. 157 (1932).

In another Wisconsin case, the driver suddenly saw a truck about four hundred feet ahead of him and, estimating the distance at two hundred and fifty feet, immediately applied his brakes. This caused the car to skid on the icy pavement, sending the car into the ditch and injuring the guest. The court held that the guest had not assumed the risk of danger incident to the driver not conscientiously exercising the skill and judgment which he had acquired or utilizing the experience acquired by him. *Monsos v. Euler*, 216 Wis. 133, 256 N.W. 630 (1934).

But the guest does assume the risk where the driver has conscientiously exercised such skill and judgment as he possesses. *Struck v. Vetter*, 233 Wis. 540, 290 N.W. 131 (1940); *School v. Milwaukee Auto Ins. Co.*, 291 N.W. 311 (Wis. 1940).

Albert F. Beck.