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Torts - Proximate Cause - Statutory Duty

Frank F. Foil

TORTS — PROXIMATE CAUSE — STATUTORY DUTY

The inattentive driver of a leased truck collided with the rear of a truck stopped, on the traveled portion of a highway, by defendant's driver, who failed to set out warning devices as required by statute.[1] The owner of the leased truck sued defendant and its insurer for property damage and loss of income resulting from the truck's forced withdrawal from use. The district court rejected plaintiff's demands. The court of appeal affirmed, holding that defendant's negligence in violating the statute was not a "proximate cause" of plaintiff's injury.[2] On certiorari, the Supreme Court of Louisiana reversed and remanded. *Held,* the statute violated was enacted to protect against the possibility that a stationary vehicle might be struck from the rear by an inattentive driver.[3] *Dixie Drive It Yourself System v. American Beverage Co.,* 242 La. 471, 137 So.2d 298 (1962).

When a plaintiff seeks recovery for damages resulting from violation of a statute, courts generally explain their decisions in terms of "proximate cause."[4] "Proximate cause" has been indiscriminately used to refer to the distinct questions of cause-in-fact,[5] negligence,[6] and scope of liability.[7] This practice has been strongly criticized as ambiguous and confusing.[8]

1. LA. R.S. 32:241-242 (1950). Under La. Acts 1962, No. 310, the "Louisiana Highway Regulatory Act," the above provisions were repealed. Requirements for warning devices on the highway are presently found in LA. R.S. 32:368-369 (Supp. 1962).

2. Dixie Drive It Yourself System v. American Beverage Co., 128 So.2d 841 (La. App. 4th Cir. 1961).

3. In the instant case the court stated that the relationship between plaintiff and the employer of the driver of the leased truck was one of bailment. Therefore, contributory negligence was not a factor, since it is not imputed from bailee to bailor. 242 La. at 480, 137 So.2d at 301.

4. Ardoin v. Williams, 108 So.2d 817, 820 (La. App. 2d Cir. 1959) ("The rule is well recognized that negligence consisting of the violation of a statute or ordinance is not actionable unless it is the proximate cause of the injury."). For definitions of proximate cause in Louisiana law see Harvey v. Great American Indemnity Co., 110 So.2d 595, 600 (La. App. 2d Cir. 1959); Cruze v. Harvey & Jones, 134 So. 730, 731 (La. App. 2d Cir. 1931).

5. Hataway v. F. Strauss & Son, 158 So. 408 (La. App. 2d Cir. 1935); Comment, 16 LA. L. REV. 391, 394 (1956).

6. Globe & Rutgers Fire Insurance Co. v. Standard Oil Co., 158 La. 763, 104 So. 707 (1925); PROSSER, TORTS 253 (2d ed. 1955); Comment, 16 LA. L. REV. 391, 394 (1956).

7. Harvey v. Great American Indemnity Co., 110 So. 2d 595 (La. App. 2d Cir. 1959); Ardoin v. Williams, 108 So. 2d 817 (La. App. 2d Cir. 1959); Cruze v. Harvey & Jones, 134 So. 730 (La. App. 2d Cir. 1931); PROSSER, TORTS 218, 252 (2d ed. 1955).

8. PROSSER, TORTS 218, 252 (2d ed. 1955); Comment, 16 LA. L. REV. 391 (1956).

The court in the instant case rejected the ambiguities of "proximate cause."[9] Rather, it considered separately the matters of negligence, cause-in-fact, and scope of liability. First, the court held that defendant's violation of the statute was negligence per se, since the statute was a safety measure designed to protect life and property on the highway.[10] Second, the court stated that since it could reasonably infer that the collision would not have occurred had the statutory precautions been taken, the negligence of defendant's driver was a cause-in-fact of the collision.[11] Then the court concluded that protection of plaintiff was among the risks against which the statute was designed to protect, since the purpose of the statute was to protect against the possibility that an inattentive driver might collide with the rear of a stationary vehicle.[12] Based on these findings, the court held defendant liable.

The instant decision suggests several questions. If for instance, the inattentive driver or his employer had been the plaintiff, the defense of contributory negligence would doubtless have been emphatically urged. But if the primary purpose of the statute was to protect against inattentive drivers, it would seem that inattentiveness should not be held contribuory negligence which bars recovery.[13]

Another question is whether the instant decision would have been different had no statute been involved. When negligence

9. 242 La. at 488, 494, 137 So.2d at 304, 307 (the doctrine "finds little support in legal theory" and is a "legal concept without fixed content. It is used indiscriminately to refer to cause-in-fact, the scope of liability, and other negligence factors.").

10. *Id.* at 481, 137 So.2d at 302. *Accord*, Brown v. S. A. Bourg & Sons, 239 La. 473, 118 So.2d 891 (1960); Williams v. Pelican Creamery, 30 So.2d 574 (La. App. 1st Cir. 1947). See generally, PROSSER, TORTS 161 (2d ed. 1955).

11. 242 La. at 487, 137 So.2d at 304. *Accord*, Arnold v. Griffith, 192 So. 761 (La. App. 2d Cir. 1939). See generally, PROSSER, TORTS 218 (2d ed. 1955); Comment, 16 LA. L. REV. 391 (1956).

12. 242 La. at 492, 137 So.2d at 306. *Accord*, Alexander v. Standard Oil Co., 140 La. 54, 72 So. 806 (1916); Lopes v. Sahuque, 114 La. 1005, 38 So. 810 (1905); Cutrer v. Southdown Sugars Inc., 42 So.2d 314 (La. App. 1st Cir. 1949); Cropper v. Mills, 27 So.2d 764 (La. App. Orl. Cir. 1946). See generally, PROSSER, TORTS 152-64 (2d ed. 1955); Comment, 16 LA. L. REV. 391 (1956).

13. This result has in fact been reached, although in so doing the court employed the language of proximate cause. Meredith v. Kidd, 147 So. 539 (La. App. 2d Cir. 1933) (plaintiff's negligence in not having proper lighting equipment on the rear of a horse-drawn vehicle was not a proximate cause of a resulting collision into the rear of plaintiff's vehicle when the driver of defendant's speeding vehicle was blinded by an approaching car from the other direction); Hinton v. Southern Ry., 172 N.C. 587, 90 S.E. 756 (1916) (plaintiff's speeding not proximate cause of injury when she ran into building to avoid colliding with defendant's train, and defendant had failed to sound warning gong prior to lowering gate across highway).

consists of violation of a statute, a court must determine against what risks the statute was designed to protect. But absent a statute defendant might have violated the general duty of due care by obstructing the highway. The court would then have had to determine against what risks this nonstatutory duty was designed to protect.

By rejecting "proximate cause" in the instant case, it is submitted that the court was able to reach its decision by clearly discussing the reasons for it. It is recommended that this approach be used to decide negligence cases in the future.

Frank F. Foil

WORKMEN'S COMPENSATION — AGGRESSOR DOCTRINE CHALLENGED

Plaintiff took offense at being called "Shorty" by a fellow employee. During an ensuing exchange of harsh words plaintiff struck the other employee in the face with a pair of pants. The latter, uninjured, responded by hitting plaintiff, causing a brain injury. Plaintiff sued his employer's workmen's compensation insurer claiming compensation for the resultant injury. The defenses asserted were that the cause of plaintiff's injuries was his wilful intention to injure another and that plaintiff had been the aggressor. The court of appeal reversed the district court's decision for plaintiff.[1] On writ of certiorari, the Louisiana Supreme Court reversed. *Held*, neither ordinary fault nor the "aggressor doctrine" has any place in the application of the Louisiana Workmen's Compensation Act. In order to sustain the statutory defense of wilful intent defendant must prove that plaintiff entertained a wilful and premeditated intention to injure another. *Velotta v. Liberty Mutual Insurance Co.*, 241 La. 814, 132 So. 2d 51 (1961).[2]

Louisiana's workmen's compensation statute provides that an employee cannot recover compensation if his injury was caused by his own "wilful intention" to injure another.[3] The burden of

1. Velotta v. Liberty Mutual Insurance Co., 126 So. 2d 445 (La. App. 2d Cir. 1961).

2. The same case, reported at 134 So. 2d 570 (La. App. 2d Cir. 1961), deals with quantum of damages.

3. LA. R.S. 23:1081 (1950): "No compensation shall be allowed for an injury