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The Doctrine of Joint Adventure in Automobile Law

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THE DOCTRINE OF JOINT ADVENTURE IN AUTOMOBILE LAW

WHILE there are, of course, many unusual and interesting questions relating to the law of automobiles and automobile actions, we all know that the majority of these cases are simply questions of facts. In the ordinary cases principles of law applicable to these facts are well understood, and yet occasionally we encounter a situation the solution of which under former presumably well-settled principles of negligence is not easy. It has been to meet these new and unusual situations which have resulted from the extensive use of automobiles that principles of law hitherto little known or little recognized have developed rapidly, and likewise entirely new principles of law and new doctrines and announcements have taken their place in the body of case law to meet situations and questions which have until recently not been presented.

A most interesting and important proposition of automobile law which has apparently not yet reached its natural growth and conclusion is the doctrine of Joint Adventure.

This doctrine is of comparatively recent announcement in the courts of this state. Its close and very important relation to automobile liability insurance I will touch upon later. The doctrine in its essence as it has been announced by our Supreme Court simply means that where two persons are engaged in a joint enterprise and adventure in the use of an automobile, the negligence of one is imputable to the other, with the result that one occupant may not recover from a driver or owner and with the further result that in an action against a stranger to the enterprise by an occupant, the negligence of his driver is imputable to him.

It should be borne in mind at the outset that the principle of joint adventure, though closely related to, is entirely separate, distinct and apart from the doctrine of contributory negligence of the occupant, and the principle of imputed negligence based on the doctrine of *Respondeat Superior*

The doctrine of joint adventure or common enterprise has no fundamental relation either to the contributory negligence of the occupant or the fact of his control over the driver. The joint enterprise having been established, the negligence of the driver becomes imputable to

the occupant, regardless of the occupant's contributory negligence and regardless of the occupant's actual control over the driver.

The difficult question relating to joint adventure is as to what constitutes a joint adventure; for it may be safely said that the legal result of such a joint adventure has been clearly announced.

The question has been passed upon by the Supreme Court of this state in three cases: *Masterson v. Leonard*,[1] *Hurley v. Spokane*,[2] *Jensen v. Chicago, Mil. & St. P R. R. Co.*[3]

Taking these cases up briefly in order. In the Masterson case it appeared that the plaintiff was a minor; that his father owned a bicycle which the plaintiff had been riding for about a year; that Edward Buck, another boy of about the same age, twelve years, had a paper route, and that at the time of the accident in question Edward Buck was riding and propelling the bicycle and the plaintiff was riding on the handle bars. Edward Buck was taking the plaintiff along in order to acquaint the plaintiff with the route so that the plaintiff could substitute if Edward Buck should become sick. Substantially this was all the testimony with relation to the purpose of the ride. The bicycle was struck by the defendant's automobile and the plaintiff was injured. It was assumed by the trial court in its instructions that Buck's negligence was imputable to the plaintiff. These instructions were questioned on appeal and the Supreme Court, holding that the boys were engaged in a joint enterprise or adventure, cited with approval the cases of *Washington, etc. R. R. Co. v. Zell's Administrator* (hereafter referred to as *"The Zell-Peck case"*)[4] and *Derrick v. Railroad Co.*[4a]

In *Hurley v. Spokane, supra,* the appellant and her brother, who was driving, were occupying their father's car with the father's permission, on their way to church. Apparently on these facts alone the court held that they were engaged in a common venture, that it was immaterial who was driving the car and that the negligence of the brother was imputable to the sister.

In the *Jensen* case, *supra,* decided February 27, 1925, it appeared that the plaintiff's intestate (Jensen), in company with several others, left Hoquiam in an automobile belonging to one Sonnabend, for the

[1] 116 Wash. 551, 200 Pac. 320 (1921).
[2] 126 Wash. 213, 217 Pac. 1004 (1923).
[3] 33 Wash. Decisions 115, 233 Pac. 635 (1925).
[4] 118 Va. 755, 88 S. E. 309 (1916).
[4a] 50 Utah 573, 168 Pac. 335 (1917).

purpose of attending a prize fight in Seattle. "The trip had been talked over among the parties for a number of days. They were to drive through to Seattle, attend the fight and return to Hoquiam. Jensen gave Sonnabend a ticket. The members of the party, aside from Sonnabend and one other had discussed among themselves before starting, the matter of expense and they had agreed that Sonnabend should not be out anything." It did not appear that this information had been conveyed to Sonnabend. They arrived in Seattle at about six o'clock, had dinner, attended the fight and started for home. At Sumner, while crossing the tracks of the defendant railroad company the automobile was struck by a train and Jensen was killed. On these facts it was held that the trial court properly submitted the question of joint adventure to the jury and the court again cites and approves the *Zell-Peck* case and in addition thereto the cases of *Wentworth v. Town of Waterbury* (hereafter referred to as "The Lake Champlain case"),[5] and *Adams v. Swift.*[6]

It will be noted that in the facts of both the *Masterson* case and the *Jensen* case there is found an element of financial contribution or profit. These decisions themselves, therefore, are hardly direct authority for the proposition that a common venture may exist without this element. However, this element is lacking in the *Hurley* case, but the facts appearing in the opinion there are so few and the discussion of the proposition so very brief that the effect of the decision is problematical.

More important, however, to the probable development of the doctrine in the State of Washington is the approval which the court has twice given to the *Zell-Peck* case from Virginia and its approval in the *Jensen* case of the *Lake Champlain* case from Vermont. These two cases undoubtedly represent the most advanced positions which the courts have taken in this country in relation to this doctrine and in the light of the approval of our own court of these two cases it seems altogether likely that the doctrine will ultimately go further in this state, to the conclusion as reached in those cases.

In the *Zell-Peck* case it appeared that Zell and Peck, both residents of Alexandria, were intimate friends and associates, Peck owning an automobile, in which he and Zell frequently went out together on pleasure trips. Both were familiar with the machine and were com-

[5] 90 Vt. 60, 96 Atl. 334 (1916).
[6] 172 Mass. 521, 52 N. E. 1068 (1899).

petent drivers. When out together they would sometimes take turn about at the wheel. Zell frequently drove the car when Peck was along and seems to have been the man who always got it out and ready for a trip. It was not unusual for them to go to Washington together on Sunday and they were on such a trip when they met their death in a collision with the train. It was assumed that Peck was driving at the time of the accident, though there was no definite testimony to this effect. The court, nevertheless, denied a recovery to Zell's administratrix on the ground that they were engaged in a joint enterprise, holding that "where two persons are engaged in a joint enterprise or adventure, even though the enterprise or adventure be only a pleasure trip, all contributory negligence of either, within the scope of the enterprise, will bar a recovery by the other."

As indicated above, this case has been cited and approved twice by our Supreme Court.

In the *Lake Champlain* case it appeared that the plaintiff, his wife and a young woman, went riding in an automobile driven by one Gibson, the automobile being owned by Gibson's father. They started from Fayston on a Sunday afternoon and went to Burlington for a ride for the purpose of showing Lake Champlain to the two women oc cupants of the car. They drove to the waterfront, drove around for a short time and then started back over the road they had gone over and on the return trip the accident occurred which was claimed to have been due to the negligence of the defendant town because of the insufficiency of a culvert. Judgment was rendered for the plaintiff, and on appeal from the Supreme Court of Vermont, judgment was reversed and the case ordered dismissed, on the ground that the driver was guilty of contributory negligence and that such negligence was imputable to the plaintiff. The court held that plaintiff and Gibson were engaged in the joint purpose of taking the two ladies for an afternoon's ride and they being engaged in such a common enterprise the negligence of one was imputable to the other.

It will be noted that in neither of these cases was there any element of profit whatsoever or of financial contribution, but the court in each of the cases referred to announces the broad doctrine that regardless of the element of profit or contribution, where two or more persons are using the automobile for a joint purpose, even though that purpose be one of pleasure, the result legally is one of a joint adventure, and as indicated above the full approval which has been given these cases in

our own court impels the conclusion that these decisions probably represent the ultimate development of the doctrine in this state.

It is manifest that it is becoming a difficult task indeed to determine in a given case whether the relation is that of guest and host or represents a joint adventure. That the line of demarcation between these two classes of cases has been considerably dimmed cannot well be doubted and yet the wisdom and justice of the development of this doctrine is very apparent. Practically it is almost impossible to show actual contributory negligence of the occupant of a car. That an occupant must do something more than simply "sit tight" is now established. An occupant may be guilty of contributory negligence by riding with a drunken driver; by failing to protest or complain against apparently excessive speed, he may be guilty of negligence in many other ways, but as a practical proposition, proof of such negligence, though it undoubtedly often exists, is difficult, if not impossible.

And yet we also know as a matter of fact that in spite of the difficulty of such proof, occupants of cars, even on pleasure rides, do and may control to a great extent the operation of the vehicle. That is, the occupant may exercise that control if he sees fit to do it and after it has been judicially declared that an automobile in a sense is a "dangerous instrumentality" there seems to be no good reason why a prospective occupant, even on a pleasure ride, should not be required to exercise some caution as to the selection of his driver and there likewise appears to be no good reason why such an occupant should not be compelled to claim through his driver, whom he has the absolute privilege to accept or reject before the ride.

So much for joint adventure. It must be realized that the doctrine in this state is just developing and its ultimate conclusion, while apparently headed in a definite direction is not yet finally determined. Text writers are not agreed on the wisdom of the rule or its justice, and there is a straight conflict in other jurisdictions. There can be no question but that it has developed as a result of the refusal of the courts to permit manifest injustice.

An extra-judicial result of this doctrine is its relation to liability insurance. It is becoming a common matter to be called upon to defend suits by children against parents and parents against children, brothers against sisters and vice versa, where the defendant carries liability insurance. Those familiar with these suits fully understand that they never would have been waged had it not been that the de-

fendant was insured, "friendly suits" as it were, with the "friends" pitted against the insurance company Collusive, nearly all of them, they are not far removed from conspiracies to defraud. The great majority of them arise when all are passengers in the same car. An upset or overturned car, a collision with a telephone pole, or even with another machine, immediately suggests the remunerative but collusive suit. Collusion, if it exists, will defeat the policy, but if an insurance company has ever been able to prove this collusion, that case is not in the books. It is needless to add that the doctrine of joint adventure applied rigorously but fairly and impartially, has tended to prevent this sort of injustice.

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