
NOTES AND COMMENTS

AUTOMOBILES

NEGLIGENCE — RIGHTS OF INJURED PASSENGER — DOCTRINE OF RES IPSA LOQUITUR

Plaintiff in an action to recover damages for personal injuries, offers proof that he was a passenger in an automobile operated at moderate speed over a considerably used road and was injured when the automobile suddenly left the road and plunged over an embankment. *Held*, the circumstances thereby established are sufficient to permit an inference of negligence on the part of the operator, under the doctrine of *res ipsa loquitur*. *Weller, Exrx. v. Worstall*, 129 Ohio St. 596, 196 N.E. 637, 3 Ohio App. 12 (1935).

Briefly stated, the doctrine of *res ipsa loquitur*, is that where the instrumentality or thing which caused the injury complained of is shown to be under the management and control of a defendant, and the accident is such as in the ordinary course of events does not happen if proper management and control is exercised, it affords reasonable evidence, in the absence of explanation by such defendant, that the accident arose from want of care, and permits the inference of negligence. *St. Marys Gas Co. v. Brodbeck*, 114 Ohio St. 423, 151 N.E. 323 (1926); *Hart v. Washington Park Club*, 157 Ill. 9, 41 N.E. 620 (1895); 5 Wigmore Evidence (2nd ed. 1923).

The doctrine has undoubtedly been more frequently applied in cases of public carriers of passengers than in any other class. *Transportation Co. v. Downer*, 11 Wall. 129, 20 U.S. 160 (1870). It has often been applied in collision and derailment cases. *Hooper v. Denver R.R. Co.* 155 Fed. 273, 84 C.C.A. 21 (1907); *Cincinnati St. R.R. v. Kelsey*, 6 O.C.D. 209 (1895). But it has now been accepted that the doctrine is not limited to railroads. *Rose v. Stevens Co.* 11 Fed. Rep. 438 (1882); *Cincinnati Traction Co. v. Holzenkamp*, 74 Ohio St. 379, 78 N.E. 529 (1906).

In situations involving automobiles the doctrine has been applied in the following cases. *Zwick v. Zwick*, 29 Ohio App. 522, 163 N.E. 917 (1928), where a driver permitted the steering wheel to escape his control, throwing the machine against poles and causing injury; *Cleveland Ice Cream Co. v. Call*, 28 Ohio App. 521, 162 N.E. 812 (1928)

where a person left his auto parked on the side of a hill and the car from some unknown cause rolled down the hill and hit plaintiff; *Scovannin v. Toelke*, 119 Ohio St. 256, 163 N.E. 495 (1928) where a truck operated by the defendant ran off the highway and collided with and damaged a building, and no other testimony was produced to prove negligent operation of the truck; *Trauerman v. Oliver's Adm'r.* 125 Va. 458, 99 S.E. 647 (1919) where it was held that an auto driver who collided with another person while the latter was standing upon the sidewalk, must show that he did everything an ordinary reasonably prudent person would have done to avoid injury. In one Ohio case, however, no presumption or inference of negligence was held to arise. *Allen v. Learick*, 43 Ohio App. 100, 182 N.E. 139 (1932) where a guest passenger was not permitted to recover under the *res ipsa* rule for being thrown from the seat when the automobile bounced while crossing an intersection.

In the principal case the instrumentality was under the control of the defendant. Since an accident does not ordinarily happen by a car leaving the road if reasonable care is used, the application of the *res ipsa loquitur* doctrine to this situation seems justified.

JOSEPH STERN

CONSTITUTIONAL LAW

POWER OF BOARD OF EDUCATION TO COMPEL SALUTE TO FLAG — INVASION OF RELIGIOUS FREEDOM

Some time ago, the Board of Education of Greenfield, Ohio, established the rule that "the Superintendent of Schools is directed to require the flag salute and the pledge of allegiance from all pupils attending the Greenfield Schools at such times and on such occasions as he may direct." Ordinarily, the Superintendent required the salute and pledge of allegiance only at assemblies of a patriotic nature, but teachers were allowed to hold similar ceremonies as opening exercises. Though these practices had been in effect over a period of time, no one, parents or children, had objected until November, 1935. At that time, the parents of four pupils, who were members of Jehovah's Witnesses, a religious sect, ordered their children not to salute the flag. The board of education settled the problem by excluding these children from all exercises at which a flag salute or pledge of allegiance was to be given.

The same problem has arisen in East Liverpool, but it has not been solved so amicably. There, the board of education expelled those who