NEGLIGENCE OF CARRIER; RACIAL DISTURBANCE AS FORESEEABLE DANGER

Bullock v. Tamiami Trails Tours, Inc.
266 F.2d 326 (5th Cir., 1959)

An action for damages resulting from an assault was brought by a colored passenger and his apparently white wife, natives of Jamaica, who contracted with defendant for carriage from Miami, Florida to New York. Neither knew of the segregation customs of Florida, nor was warned of them by defendant. They took a front seat in a bus at Miami and were later requested by the driver to move to the rear. No reason being given for the request, the plaintiffs remained in the same seat. While the bus was stopped at Perry, Florida, a bystander overheard the driver speak of the plaintiffs' difference in color and of their position on the bus. He purchased a ticket to a nearby town, boarded the bus, and assaulted the plaintiffs. The United States District Court found the assault to have been an *unforeseeable* danger which defendant had no duty to protect against.[1] The Court of Appeals reversed, holding that defendant had been negligent in breaching its duty to protect passengers from harm resulting from *foreseeable* dangerous acts of third parties.

Generally, carriers are required to exercise the highest degree of care in protecting their passengers from injury resulting from the dangerous acts of third parties, so long as the danger is reasonably to be foreseen.[2] Florida follows this general rule.[3] The importance of this case lies in the fact that it is the first to consider the racial climate of the region in determining foreseeability.[4]

The question of foreseeability depends to a very great extent upon the peculiar facts of the particular case.[5] Courts have found foreseeability where: (1) strikers and strikebreakers were on the same train and the conductor took no steps to avert violence;[6] (2) an intoxicated and disorderly

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1 Bullock v. Tamiami Trails Tours, Inc., 162 F. Supp. 203 (N.D. Fla. 1958).

2 13 C.J.S. "Carriers" § 678 (1938); 10 Am. Jur. "Carriers" § 1236 (1937); Prosser, Torts § 38 (2d ed. 1955); Annot., 15 A.L.R. 862 (1921); Annot., 42 A.L.R. 168 (1926); Annot., 43 A.L.R. 1035 (1926); Restatement, Torts § 348 (1934). The carrier has an identical duty to protect and to warn against *foreseeable* dangers to the passenger. Restatement, Torts § 348(b)(ii). See also Rose v. City of Chicago, 317 Ill. App. 1, 45 N.E.2d 717 (1942).

The Ohio rule on "fellow-passenger" injuries is in substantial accord with the general rule. Floyd v. Cleveland, 9 Ohio App. 282, 123 N.E.2d 540 (1955); Schafer v. Youngstown Municipal R.R., 19 Ohio L. Abs. 205 (Ct. App. 1935); Paal v. Cleveland R.R., 11 Ohio App. 462 (1918); 8 Ohio Jur. 2d "Carriers" §§ 221, 222 (1954). It is highly unlikely that Ohio would be presented with a situation like that in the principal case, due to the difference in customs.

3 Bullock v. Tamiami Trails Tours, Inc., 266 F.2d 326, 331 (5th Cir. 1959). The court cited Hall v. Seaboard Air Line Ry., 84 Fla. 9, 93 So. 151 (1921); Kenan v. Houstoun, 150 Fla. 357, 7 So.2d 837 (1942).

4 162 F. Supp. at 205.

5 *Ibid.*

6 Nute v. Boston & M.R.R., 214 Mass. 184, 100 N.E. 1099 (1913).

person was allowed to board a train;[7] (3) a drunk and boisterous person was allowed to board a train, and the conductor was warned of trouble by another passenger;[8] (4) a disorderly white person was known to be seated in a segregated negro railway car;[9] (5) a street car operator heard verbal threats pass between two passengers, one negro and one white.[10] Conversely, foreseeability has been found missing where: (1) a female passenger was insulted by an assailant, and had threatened him lest he insult her again;[11] (2) the plaintiff was shoved from a railway car while a pistol duel was in progress between two other passengers, the conductor being fully aware of the duel;[12] (3) an obviously intoxicated, but not boisterous, person was allowed to board a municipal bus.[13]

Both the District Court and the Court of Appeals here relied upon the same case which recites the general rule of foreseeability.[14] However, the former reasoned that since there had been no previous similar outbreaks of violence in the several years since integration forces had come to be felt in the South, the defendant had no reason to anticipate violence.[15] The Court of Appeals rejected this reasoning, basing its decision upon customs of the area. The court found that the drivers knew those customs and noted that two company bulletins had warned drivers of racial disturbances. It is also inferred that the drivers knew of plaintiffs' foreign nationality and probable inexperience with "southern tradition."[16] The court termed it ". . . the commonly and generally known fact . . ."[17] that plaintiffs' position on the bus would cause a reasonable man, familiar with local custom, to anticipate violence.

The basic difference between the views of the two courts lies in the Court of Appeals' recognition of "southern tradition" and local "folkways."[18] This is the superior approach to this case, as *all* the pertinent factual circumstances should be considered in determining foreseeability. These circumstances include, certainly, the social framework in which the events take place. Failure to include this consideration in the test of foreseeability, and insistence upon a prior similar occurrence, results, necessarily, in a rule analogous to a "one free bite" rule. The Court of Appeals has filled the gap in the logic of such a rule.

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[7] Kinsey v. Hudson & M.R.R., 130 N.J.L. 285, 32 A.2d 497 (1943).

[8] Kline v. Milwaukee Elec. Ry. & Light Co., 146 Wis. 134, 131 N.W. 427 (1911).

[9] Hillman v. Georgia R. & Banking Co., 126 Ga. 814, 56 S.E. 68 (1906).

[10] Case v. St. Louis Public Service Co., 238 Mo. App. 1029, 192 S.W.2d 595 (1946).

[11] Hoff v. Public Service Ry., 91 N.J.L. 641, 103 Atl. 209 (1918).

[12] Chicago, R.I. & P. Ry. v. Brown, 111 Ark. 288, 163 S.W. 525 (1914).

[13] Munter v. St. Louis Public Service Co., 258 S.W.2d 255 (Mo. App. 1953).

[14] Hall v. Seaboard Air Line Ry. Co., *supra* note 3. The general rule is substantially the same as that noted previously. Two judges dissented on the question of foreseeability of danger.

[15] Bullock v. Tamiami Trails Tours, Inc., 162 F. Supp. at 205.

[16] Bullock v. Tamiami Trails Tours, Inc., 266 F.2d at 332.

[17] *Ibid.*

[18] *Ibid.*