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NOTES

THE DUTY OF A DRIVER WHOSE VISION IS OBSCURED

The complexity of modern traffic situations has made the duty of the automobile driver increasingly difficult to determine. When visibility is an important factor, the determination of this duty is confounded further by the presence of such conditions as darkness, fog, blowing snow, and the headlights of other vehicles. In solving problems involving vision in automobile negligence cases, the courts have employed three approaches—what is called the "assured clear distance" rule, the assured clear distance rule with exceptions, and the reasonable and prudent man test. Under the assured clear distance rule, a driver is charged with the duty to so drive his vehicle that he can bring it to a stop within the visible distance ahead.¹ The development and extensive employment of this doctrine is evidence of dissatisfaction with the basic negligence principles that impose upon the driver of an automobile the duty to exercise that degree of care which a reasonable and prudent man would exercise, under the same or similar circumstances, to avoid an unreasonable risk of harm.

1. See cases in 44 A.L.R. 1403 (1926), 97 A.L.R. 546 (1935).

Application of the assured clear distance rule is illustrated in a Maine case where the plaintiff was momentarily blinded by the headlights of another vehicle and as a result crashed into the rear of the defendant's parked car. A judgment on the verdict for plaintiff was reversed, the Supreme Judicial Court of Maine holding that the plaintiff was contributorily negligent in failing to stop when for any reason he could not see where he was going. The decision stressed the rule that an automobile driver must operate his car so that he can stop within the range of his headlights.² In a subsequent case approving this decision, the court asserted that no driver is entitled to operate an automobile when his vision is destroyed by glaring light. The driver's duty under such conditions, the court said, is to stop his car; he will not be permitted to continue under doubtful circumstances. If he doesn't know what is ahead, he must stop.³ In an Arizona case, under similar facts, the appellate court said it was the defendant's duty to stop, and a lower court judgment was reversed and remanded.⁴ In these cases the determination of the duty of the driver and the presence of a violation were determined, not by the jury, but by the court. Invoked was the rule which states that a driver must at all times operate his vehicle so that he can stop within the distance his eyes can see. If his vision is obscured or blocked, even though momentarily, he must bring his car to a halt.

An illustration of the assured clear distance rule coupled with exceptions is found in a case decided in Rhode Island where the facts again reveal that the defendant's vision was interfered with by the lights of an approaching car. In affirming a judgment on a verdict adverse to the defendant, the court said that under certain conditions it would be the duty of a driver of an automobile when blinded by dazzling lights to have his car under such control that he would be able to bring it to an immediate stop. The court then pointed out the difficulty of applying the assured clear distance rule inflexibly to all cases and said further that the presence of blinding lights is only one of the factors to be weighed by the jury along with other circumstances bearing on the general question of negligence.⁵ In Michigan, the strict rule has been applied, but in one case an exception was recognized; if the plaintiff was not in the defendant's range of vision before the defendant's vision was interfered with, the question of when defendant should have seen him was a matter of fact for the jury.⁶

An example of the employment of the reasonable and prudent man test as applied to this problem is found in the holding in a Montana case where the defendant's train was struck by the plaintiff's car. The defendant contended that its motion for a directed verdict should have

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2. Spang v. Cote, 144 Me. 338, 58 A.2d 823 (1949).
 3. Sanborn v. Stone, 149 Me. 429, 103 A.2d 101 (1954).
 4. Krauth v. Billar, 71 Ariz. 298, 226 P.2d 1012 (1951).
 5. Eagan v. Boyce, ___R.I.___, 114 A.2d 402 (1955).
 6. Earley v. Sutherby, 341 Mich. 77, 67 N.W.2d 174 (1954).

been granted because the plaintiff was operating his vehicle in such a manner that it could not be stopped within the range of its headlights. Such, argued the defendant, constituted the plaintiff negligent as a matter of law. The court rejected this rule, stating that each case must be considered by the jury in the light of its facts and circumstances and the usual tests applied to determine whether there was or was not a failure to exercise ordinary care.⁷ Here, the strict rule was rejected even in the absence of any mitigating circumstances such as blinding headlights, fog, or blowing snow. In an early New York decision, in dealing with a case where the defendant had run down and killed a pedestrian, the lower court instructed the jury that if upon being blinded the defendant did not immediately stop his car in the distance so required, the defendant was guilty of negligence. This instruction was held to be error by the Supreme Court. The court concluded that the question of whether under the circumstances the defendant acted with ordinary care was a question for the jury.⁸ In a federal decision, the court held, in reversing a lower court finding, that the better rule was that except where the evidence is so conclusive that there could be no doubt in the minds of reasonable men, the question of negligence should be left to the jury.⁹

It would be error to conclude that each state follows one of the three approaches discussed; that one approach is the "Arizona Rule" and another the "New York" rule. The ordinary reasonable man test of negligence may be employed, and the question left for the jury's decision, except in cases where no reasonable minds could differ. At the other extreme, the same courts have held that one who cannot stop within the range of his vision is guilty of negligence as a matter of law. In extreme applications, it is held that if a driver is blinded, even though momentarily, he must stop his car as quickly as possible or be liable for any accident that occurs. At other times the court may temper this rule with modifications. If the driver encounters conditions that hinder his vision, he is not required by law to stop, but the jury may weigh this problem along with other circumstances involved in the question of negligence.

The treatment of the problem in Wyoming has called into play each of the three approaches. In the case of *Jackson v. Norris*,¹⁰ the court evidently applied the reasonable man rule. The plaintiff, at night, crashed into the defendant's parked, unlighted truck. The rules under discussion here were not stressed by counsel nor alluded to by the court, but it is worthy of note that the problem of the plaintiff's contributory negligence was submitted to the jury and its finding was not disturbed by the Supreme Court. More can be deduced from the case of *Merback v. Blanchard*,¹¹ where the court apparently shifted to the assured clear distance rule with

7. *Broberg v. Northern Pacific R. R. Co.*, 120 Mont. 280, 182 P.2d 851 (1947).

8. *Scholing v. O'Connor*, 205 App.Div. 720, 200 N.Y.S. 797 (1923).

9. *Morris v. Sells Floto Circus*, 65 F.2d 782 (4th Cir. 1933).

10. 54 Wyo. 403, 93 P.2d 498 (1939).

11. 56 Wyo. 152, 105 P.2d 272, rehearing denied, 56 Wyo. 286 (1940).

exceptions. The lower court directed a verdict in favor of the defendant, who had stopped his vehicle on the highway at night and had been struck by the decedent. The lower court stated that a driver who fails to stop or turn aside to avoid any obstructions within the range of his lights is negligent as a matter of law. The Supreme Court of Wyoming reversed this judgment and remanded the case for new trial, holding that a driver of an automobile who collides with an obstruction on the highway should not be held negligent as a matter of law if there is evidence from which the jury may find "disconcerting circumstances" affecting his action at the time of the collision. So-called "disconcerting circumstances" in this case existed in the showing that the back of the defendant's truck was coated with road oil, thus making the truck more difficult to see from the rear, and also that the lights of an approaching vehicle interfered with the vision of the plaintiff's decedent. For this rule, the *Jackson* case is cited. It would seem, however, that differing rules were applied in the two cases. Perhaps in the earlier case, the absence of lights on the defendant's truck was considered a disconcerting circumstance, but this label was not specifically applied. In any event, a definite rule is first formulated in the *Merback* case. In *Gamet v. Beasley*,¹² where the plaintiff, driving on a foggy night, collided with the rear of the defendant's parked car, the court reverted to the "liberal" rule—the standard of care to be exercised at night is one for the trier of the facts, in the absence of any standard derived from express legal enactment or the usual practice and custom of the community. Neither the *Jackson* case nor the *Merback* case are cited in this decision.

The case of *Price v. State Highway Commission*,¹³ in which the court applies the assured clear distance rule, was a complete reversal of the trend toward the more liberal rule. The plaintiff, his vision obscured by blowing snow, collided with a snowplow which had been proceeding without warning signals. Judgment for the defendant was affirmed, the Supreme Court applying the strict rule without citing any other earlier Wyoming case dealing with this problem. But in the case of *Hawkins v. Loffland Brothers Company*,¹⁴ where the plaintiff's decedent had crashed into the rear of the defendant's parked truck, the court cited and analyzed the rule in *Merback v. Blanchard*. The court held in reversing the judgment of the lower court that the decedent was guilty of contributory negligence as a matter of law for failing to see the truck in the absence of any disconcerting circumstances.

In the most recent case, *Templar v. Tongate*,¹⁵ the Supreme Court of Wyoming indicates a willingness to abide by the reasonable man test. The court said that the fact that the defendant was blinded by sunlight just prior to the collision did not, as a matter of law, absolve the defendant

12. 62 Wyo. 1, 159 P.2d 916 (1945).

13. 62 Wyo. 385, 167 P.2d 309 (1945).

14. 70 Wyo. 366, 250 P.2d 498 (1952).

15. 71 Wyo. 148, 255 P.2d 223 (1952).

of negligence in not seeing the decedent's car until it was too late to avoid a collision. The question, it was said, was whether the defendant should have been declared negligent as a matter of law for not stopping or drastically reducing his speed when blinded by the sun. The court determined that the defendant was not negligent as a matter of law, and found that the question had been correctly submitted to the jury for their determination. The conclusion reached in this case indicates a trend toward the use of the reasonable man test in lieu of the assured clear distance rule and its exceptions in the case of what are termed "disconcerting circumstances."

The assured clear distance rule is an example of a court made standard of care that can have disastrous results when applied to certain fact situations. It can be used safely only with fact situations that reveal such flagrant negligence that there could be no doubt in the minds of reasonable men that the party charged was guilty. Here, obviously, the reasonable man test would produce the same determination. In cases less easily determined, the use of the rule prohibits the defendant's explanation of any circumstances that would absolve him of blame. The employment of exceptions, such as the "disconcerting circumstances" exception, alleviates this to some extent, but it places upon the court the additional burden of determining what these circumstances are. When driving at night, the motorist may be temporarily blinded innumerable times by the lights of other cars. To require the driver to stop at each encounter would be to place an unworkable obstacle in the path of modern highway travel. It has been said that the application of such an unrealistic doctrine is justified by the reasoning that no one should be allowed to continue to drive when vision is blocked or obscured. It is rarely considered that the agent which hinders vision, fog, smoke, the headlights of other cars, may be one of short, sometimes split second existence, and that practically speaking it may be a safer and more expeditious course to keep the vehicle moving, especially when traveling on heavily congested high speed thruways. Many courts have recognized and commented upon the difficulty of applying the assured clear distance doctrine to the facts of particular cases.¹⁶ The usefulness of this approach is not enhanced by the interposition of exceptions such as the vague "disconcerting circumstances" exception that has been employed in Wyoming. In the interest of justice and clarity, the use of the assured clear distance rule, and the exceptions and qualifications employed, should be eliminated. In order that all the factors of the accident may be considered, rather than having the case in effect decided upon the one factor of temporarily obscured vision, the reasonable and prudent man test should be applied.

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16. *Chaffin v. Brame*, 233 N.C. 377, 64 S.E.2d 276 (1951).