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Torts--Wrongful Death--Suicide Actionable Where Induced by Defendant

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kerosene for several years, and no one had ever complained about it. Y bought some of the oil which had been adulterated by gasoline and she was severely injured when it exploded. In an excellently written opinion, the Virginia court considered numerous authorities on the subject and reached the conclusion that where the vendor is not the manufacturer and the purchaser knows or should know this, then the vendor is not responsible for latent defects on the theory of implied warranty. *Accord, Universal Motors Co. v. Snow*, 149 Va. 690, 140 S. E. 653 (1927).

The above decisions have a firm foundation. Any other results would have been inequitable and undesirable, defeating the very reason for the existence of implied warranties. As was so ably pointed out in *Ellis v. Montgomery & Crawford, Inc.*, 189 S.C. 72, 200 S.E. 82 (1938), a rule contra to the one in the principal case would make retailers of the simplest and most common household and other goods absolute insurers of the infallibility of all those in the manufacturing process, from the raw-material suppliers to middlemen handling the finished product which he re-sells to the ultimate consumer.

L. O. H.

TORTS—WRONGFUL DEATH—SUICIDE ACTIONABLE WHERE INDUCED BY DEFENDANT.—A diamond broker having committed suicide, his personal representative brought an action against two diamond dealers to recover under N.Y. Decedent Estate Law § 130. *Ds* had allegedly obtained a diamond from deceased upon the agreement that they would return the stone or give compensation therefor upon demand. Decedent had received the diamond from a wholesaler on the same terms. When decedent called for the diamond, *Ds* refused to return it or to pay for it, thereby intentionally threatening the broker's reputation and livelihood. *P* alleged that *Ds'* wilful act induced in the broker an irresistible impulse to take his own life. *Held*, denying motion to dismiss the cause of action, that where it was alleged that malicious and intentional conversion of a consigned diamond induced in the deceased an irresistible impulse to take his own life, and that he did so, recovery could be had for the death of deceased caused by *Ds'* wrongful act. *Cauverien v. De Metz*, 188 N.Y.S.2d 627 (1959).

The principal case represents the latest stage in the evolution of a rule of law that has been three quarters of a century in the

making. It has long been held that suicide is a new and independent agency, which breaks the casual connection between the wrongful act and the death, precluding an action under the wrongful death statutes. *Scheffer v. Railroad Co.*, 105 U.S. 249 (1881).

The rule against recovery for a suicide was made even more emphatic in *Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921), which held that if a man kills himself deliberately, there is an intervening act of his own will for which there is no recovery. If, on the other hand, his self-killing is not of his own volition, but the result of suicidal mania, it must be held that suicidal mania is not a natural or reasonable result of either mental or physical torture, and even under these circumstances the act of suicide affords no remedy.

In the meantime, during this early period, while expressed judicial opinion against recovery for suicide was seemingly adamant, the seeds of a new rule were being planted. In the often-cited case of *Daniels v. New York, N.H. & H.R.R.*, 183 Mass. 393, 67 N. E. 424 (1903), while denying recovery in the specific instance on the ground that the voluntary, wilful act of suicide of an insane person, who knows the purpose and physical effect of his act, is a new and independent cause, the court observed by way of dictum:

“The liability of a defendant for a death by suicide exists only when the death is the result of an uncontrollable impulse, or is accomplished in delirium or frenzy caused by the collision and without conscious volition to produce death, having knowledge of the physical nature and consequences of the act.”

Citing that decision and following its dictum was the case of *In re Sponatski*, 220 Mass. 526, 108 N.E. 466 (1915), which heralded a long and consistent line of workmen's compensation cases. The deceased in this instance received an injury through a splash of molten lead in his eye in the course of his employment by D. The court, in granting recovery, sustained the finding of the Industrial Accident Board that decedent threw himself from a window and was fatally injured while insane, that the insanity resulted from the injury and that the death resulted from an uncontrollable impulse and without conscious volition to produce death.

The workmen's compensation cases were particularly receptive to such a rule, for in this field, the laws are given a broad and liberal construction, and, although the rule of proximate cause is applied,

doubtful cases are resolved in favor of compensation. *Morris v. State Compensation Commissioner*, 135 W. Va. 425, 64 S.E.2d 496 (1951).

Since the *Sponatski* decision, *supra*, a growing number of cases under the workmen's compensation acts has consistently granted recovery where the facts indicate an uncontrollable impulse on the part of decedent to take his own life due to an injury sustained while in the employ of the defendant. *Prentiss Truck & Tractor Co. v. Spencer*, 228 Miss. 66, 87 So.2d 272 (1956); *Maricle v. Glazier*, 307 N.Y. 738, 121 N.E.2d 549 (1954). Some decisions have been based upon the extrahazardous nature of decedent's employment prior to his injury. *McFarland v. Department of Labor & Indus.*, 188 Wash. 357, 62 P.2d 714 (1936).

More conservative jurisdictions have recognized the rule by way of dicta, but have consistently denied recovery on the ground that in each case *P* failed to establish the existence of an uncontrollable impulse in the decedent's prior to his death. *Kasman v. Hillman Coal & Coke Co.*, 149 Pa. Super. 263, 27 A.2d 762 (1942); *Cubit v. City of Philadelphia*, 138 Pa. Super. 569, 10 A.2d 853 (1940).

The federal courts seem to distinguish the employer-employee relationship between the defendant and the decedent, for although general tort liability has been denied where insanity induced by *D* drove decedent to suicide, *Scheffer v. Railroad Co.*, *supra*; *Salcedo v. Palmer*, *supra*, recovery has been granted where it was sought under the appropriate worker's compensation act. In the case of *Voris v. Texas Employers Ins. Ass'n*, 190 F.2d 929 (5th Cir.), cert. denied, 342 U.S. 932 (1951), the court held that in cases involving suicide, under the Longshoremen's & Harbor Workers' Compensation Law, a distinction should be drawn between a wilful intention to kill one's self and an act of self-destruction which, because of employee's mental condition due to insanity, is not wilful.

In the broader branches of tort law, however, the courts hesitate to adopt this exception to the rule of no liability for a suicide. The great weight of authority seems to be exemplified in the decision of *Scott v. Greenville Pharmacy, Inc.*, 212 S.C. 485, 48 S.E.2d 324 (1948). In that case it was observed that so many elements may enter into a suicide that it is impossible to say that it was the natural and probable consequence of the negligence. Thus the doctrine set forth earlier in *Scheffer v. Railroad Co.*, *supra*, is still the dominating rule.

However, there are forebodings of the day when the irresistible impulse doctrine of liability for suicide may break its workmen's compensation confines and be cast upon the public. Already, in *Elliott v. Stone Baking Co.*, 49 Ga. App. 515, 176 S.E. 112 (1934), it has been held that where *D*'s automobile negligently struck *P*'s decedent, causing head injuries that resulted in insanity, and that while in this insane condition decedent took his own life, a cause of action was stated.

On the other hand, where *D*'s accusations of larceny were "more than decedent could endure" and he thereby took his own life, decedent's intervening act was held to be the sole proximate cause of his death. *Jones v. Stewart*, 183 Tenn. 176, 191 S.W.2d 439 (1946). In the only other case found in which recovery was sought for a suicide where the insanity of decedent was not caused by a physical injury, but by malicious threats and demands by *Ds*, the court held that no remedy was available. *Stevens v. Steadman*, 140 Ga. 680, 79 S.E. 564 (1913). However, the plaintiff in each of these instances presented a case that was too weak to inspire precedent. This deficiency in the factual situation seems to have been fulfilled by the principal case, which has made a bold step in the direction of the irresistible impulse doctrine of recovery for suicide.

To provide an indication of the possibilities the rule in the principal case might present, a recent English case was found in which decedent sustained head injuries in the course of employment by *D*. Eighteen months later, as a result of a condition of "acute anxiety neurosis" induced by the injury, decedent "deliberately hanged himself." The court's reasoning was that "on the evidence . . . the deceased would not have committed suicide if he had not been in a condition of acute neurotic depression induced by the accident." *Pigney v. Pointer's Transport Services Ltd.*, [1957] 1 Weekly L.R. 1121 (S.A.).

Courts have expressed alarm at the possible implications of the rule, were it widely accepted. See *Arsnow v. Red Top Cab Co.*, 159 Wash. 137, 292 Pac. 436, 444 (1930). In speculating as to the logical ultimatum of such a rule, must it not be considered that where one is liable for inducing the suicide of another by a wholly unrelated act, such as negligence which results in an injury, a malicious, or perhaps thoughtless, accusation or demand, or, as in the

principal case, the wrongful conversion of goods, one might also be responsible criminally for the same act, having aided and abetted a suicide?

If decedent, in his irresponsible condition, takes another's life as well as his own, or perhaps instead of his own, would not the defendant be liable under the wrongful death statutes for any such result? Or, instead of death, if mere property damage to the injured person or to a third person resulted from the uncontrollable impulses caused by defendant's act, would not defendant be responsible for all these consequences? Viewing the situation in a different aspect, how much litigation would be encouraged were the courts to condone the establishing of causation by mere speculative testimony in mental illness circumstances?

Upon considering these questions, and countless others that might arise, it is plainly evident that this rule is not one adapted for universal application, but is merely a mutated offspring of the general rule, that was formulated as a desperate short-cut to justice in a few isolated "hardship" cases. It is conceivable that an extremely restricted version of the rule might render justice in those exceptional cases, but in view of the tendency of the courts toward liberality over the years, such a rule, even with compromising restrictions, would inevitably grow cumbersome, and ultimately become embarrassing.

However, with the notable exception of the workmen's compensation cases, the vast majority of jurisdictions are unwilling to allow recovery where defendant's wrongful act is alleged to have been the cause of decedent's suicide. Although no West Virginia cases have been found that face the situation squarely, there is sufficient indication that this state adheres to the majority rule, even to the inclusion of the workmen's compensation cases. *Vento v. State Compensation Commissioner*, 130 W. Va. 577, 44 S.E.2d 626 (1947). This rule is so widely held and is so deeply entrenched within the decisions of most jurisdictions that no establishment of a radical departure such as that set forth in the principal case is foreseeable.

O. A. J.