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Torts--Negligence--Psychic Injury Held Compensable Without Proof of Physical Injury or Impact (Battalla v. State, 10 N.Y.2d 237 (1961))

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TORTS—NEGLIGENCE—PSYCHIC INJURY HELD COMPENSABLE WITHOUT PROOF OF PHYSICAL INJURY OR IMPACT.—The complaint stated that the infant plaintiff was placed in a chair lift at a ski center by a state employee who did not properly lock the safety belt. As a result, the plaintiff became frightened and hysterical on the descent and now seeks to recover damages for the consequent "emotional, neurological disturbances with residual physical manifestations." The New York Court of Appeals, in a four to three decision overruling *Mitchell v. Rochester Ry.*,[1] *held* that one can recover for injuries resulting from fright negligently caused, without the necessity of showing immediate physical injury or contemporaneous impact. *Battalla v. State*, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961).

There is some scientific foundation for the proposition that severe emotional disturbance can cause physical injury.[2] For example, in a case where A negligently causes B to be put in great fear for her life, the fright could cause B subsequently to suffer a miscarriage or some physical impairment. The modern English view[3] and the American majority rule[4] would allow B to recover for the injuries resulting from her fright. The New York courts, on the other hand, up to the time of the instant case were governed by the decision of the Court of Appeals in 1896 in *Mitchell v. Rochester Ry.*[5] There, while the plaintiff was waiting to enter one of the defendant's horse cars, another of the defendant's cars which was coming down the street veered to the right. The team of horses came so close to the plaintiff that when they were stopped she stood between the horses' heads. It was alleged that as a consequence of the fright plaintiff suffered a miscarriage. The court denied her recovery, since there was no immediate physical injury. The court reasoned as follows: (1) since there could be no recovery for the fright itself, there could be none for the consequences of it; (2) the miscarriage was not the proximate result of the defendant's negligence; (3) to permit recovery would lead to a flood of litigation wherein

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[1] 151 N.Y. 107, 45 N.E. 354 (1896).

[2] See Smith, *Relation of Emotions to Injury and Disease: Legal Liability for Psychic Stimuli*, 30 VA. L. REV. 193, 212-26 (1944).

[3] Owens v. Liverpool Corp., [1939] 1 K.B. 394 (C.A. 1938); Hambrook v. Stokes Bros., [1925] 1 K.B. 141 (C.A. 1924); Dulieu v. White & Sons, [1901] 2 K.B. 669. The older English view denying recovery was expressed in Victorian Ry. Comm'rs v. Coultas, [1888] 13 App. Cas. 222 (P.C.).

[4] 1936 LEG. DOC. No. 65, N.Y. LAW REVISION COMM'N REP. (E) 32-35; McNiece, *Psychic Injury and Tort Liability in New York*, 24 ST. JOHN'S L. REV. 1, 15-16 (1949). See, *e.g.*, Lindley v. Knowlton, 179 Cal. 298, 176 Pac. 440 (1918); Orlo v. Connecticut Co., 128 Conn. 231, 21 A.2d 402 (1941).

[5] 151 N.Y. 107, 45 N.E. 354 (1896).

claims could easily be feigned and damages would be too speculative to estimate. The present Court has regarded the first two reasons as having little weight.[6]

The *Mitchell* rule has been "watered down" by many exceptions.[7] Two closely allied exceptions, and perhaps the most frequently applied, are the "immediate physical injury" cases and the "slight impact" cases. *Maloney v. Knickerbocker Ice Co.*[8] is illustrative of the first exception. There the plaintiff, frightened and seeking to avoid being hit by a runaway horse, turned and broke his leg. Another example of this exception is found in *Comstock v. Wilson,*[9] in which the defendant's automobile collided with that of the plaintiff's testatrix. Shortly after the latter got out of her automobile, she fainted, fell to the pavement, fractured her skull and died. In these two cases, wherein recovery was allowed, the defendant's negligence caused an emotional impact upon the plaintiffs which immediately led to their injury. It should also be noted that recovery has been allowed under the "immediate injury" exception in a situation where plaintiff, present at the scene, suffered fright at the sight of a close relative's being placed in imminent danger.[10]

The "slight impact" cases came into play where the defendant not only caused the plaintiff to be frightened but also caused there to be inflicted upon him some impact or battery.[11] In earlier cases, the New York courts tended to be strict as to the causal connection between the impact and the resultant injury, and it was said that the impact, not merely the fright, must be a cause of the injury.[12] If the causal relation existed, damages

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[6] Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961).

[7] For a discussion of the exceptions to the New York rule, see McNiece, *supra* note 4, at 32-68.

[8] 229 App. Div. 317, 241 N.Y. Supp. 160 (1st Dep't 1930).

[9] 257 N.Y. 231, 177 N.E. 431 (1931).

[10] Cohn v. Ansonia Realty Co., 162 App. Div. 791, 148 N.Y. Supp. 39 (1st Dep't 1914). Here, a mother saw her children ascending in an elevator with no operator and with the door open. She was so frightened that she fainted and fell into the elevator shaft.

[11] The following are "slight impact" cases: Sawyer v. Dougherty, 286 App. Div. 1061, 144 N.Y.S.2d 746 (3d Dep't 1955) (memorandum decision) (hit by blast of air filled with glass and wooden splinters); Powell v. Hudson Valley Ry., 88 App. Div. 133, 84 N.Y. Supp. 337 (3d Dep't 1903) (slight burn); Wood v. N.Y. Cent. & H.R.R.R., 83 App. Div. 604, 82 N.Y. Supp. 160 (4th Dep't 1903), *aff'd mem.*, 179 N.Y. 557, 71 N.E. 1142 (1904) (jolting of buggy and impact against seat); Buckbee v. Third Ave. R.R., 64 App. Div. 360, 72 N.Y. Supp. 217 (2d Dep't 1901) (electric shock); Jones v. Brooklyn Heights R.R., 23 App. Div. 141, 48 N.Y. Supp. 914 (2d Dep't 1897) (struck on temple by incandescent bulb).

[12] Hack v. Dady, 142 App. Div. 510, 127 N.Y. Supp. 22 (2d Dep't 1897). The court said: "[I]t is established in this State that in an action for

could be recovered for injuries resulting both from the fright and the impact. Later decisions displayed a more liberal tendency,[13] so that New York seemed in accord with those jurisdictions which allowed recovery for injury due to fright so long as some impact was present, no matter how inconsequential.[14] The justification for the requirement of some impact upon which recovery could be tacked was said to lie in the fact that the impact was a guarantee of the bona fides of the claimant.[15] In summary, although New York had allowed recovery for psychic injuries negligently caused when there was some impact or immediate injury, its overall espousal of non-recovery marked it as a minority jurisdiction.

The Court of Appeals in the instant case grounded its rejection of the *Mitchell* case on the following considerations. First of all, the *Mitchell* case runs counter to the current of modern thinking in the area. As the Court says:

> [I]t is well to note that [the *Mitchell* doctrine] has been thoroughly repudiated by the English Courts which initiated it, rejected by a majority of American jurisdictions, abandoned by many which originally adopted it, and diluted, through numerous exceptions, in the minority which retained it. Moreover, it is the opinion of scholars that *the right* to bring an action should be enforced.[16]

Secondly, the law should provide a remedy, so the Court argues, for every substantial wrong. It is not for the court to say as a matter of law that a negligent act cannot be the proximate cause of psychic injury.[17] Rather it is for the jury to say whether a particular negligent act proximately caused an injury. Thirdly, in answer to the argument that to allow recovery would encourage

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negligence there cannot be recovery for mere fright or for injuries that are the direct consequence of it . . . and I think that a recovery may not be had in an action for negligence for consequences attributable to fright alone, or to shock alone, merely upon proof that there was a bodily injury coincident with that fright or that shock, but it must appear that there was some causal relation between the bodily injury and the fright or shock." *Id.* at 513, 127 N.Y. Supp. at 25. *Accord,* Jones v. Brooklyn Heights R.R., *supra* note 11.

[13] Comstock v. Wilson, 257 N.Y. 231, 177 N.E. 431 (1937); Sawyer v. Dougherty, 286 App. Div. 1061, 144 N.Y.S.2d 746 (3d Dep't) (memorandum decision), *motion for leave to appeal denied,* 309 N.Y. 1032 (1955); Tracy v. Hotel Wellington Corp., 175 N.Y. Supp. 100 (Sup. Ct.), *aff'd mem.,* 188 App. Div. 923, 176 N.Y. Supp. 923 (2d Dep't 1919); see 1936 LEG. Doc. No. 65, N.Y. LAW REVISION COMM'N REP. (E) 56-59; McNiece, *supra* note 4, at 57-58.

[14] Homans v. Boston Elevated Ry., 180 Mass. 456, 62 N.E. 737 (1902); Gillogly v. Dunham, 187 Mo. App. 551, 174 S.W. 118 (1915).

[15] Comstock v. Wilson, 257 N.Y. 231, 239, 177 N.E. 431, 433 (1931).

[16] Battalla v. State, 10 N.Y.2d 237, 239, 176 N.E.2d 729, 730, 219 N.Y.S.2d 34, 36 (1961).

[17] *Id.* at 240, 176 N.E.2d at 730, 219 N.Y.S.2d at 36.

the bringing of fictitious suits, the majority states that a court should not be swayed by arguments of mere expediency. A logical legal right cannot be denied because there is danger of recovery for feigned injuries in some cases.[18] Moreover, accidents and injuries can just as easily be feigned in the "slight impact" cases and in other exceptions to the rule. Because of the rule and its numerous exceptions, not only are claimants tempted to perjure themselves so as to fit within the ambit of a particular exception, but honest claimants are penalized by their unwillingness to do likewise.[19] Finally, as to the argument that damages are speculative and difficult to prove, the Court answers:

> In many instances, just as in impact cases, there will be no doubt as to the presence and extent of the damage and the fact that it was proximately caused by defendant's negligence. In the difficult cases, we must look to the quality and genuineness of proof, and rely to an extent on the contemporary sophistication of the medical profession and the ability of the court and jury to weed out the dishonest claims.[20]

The dissenting members of the Court argue on purely practical grounds. They express concern over the fact that the scope of actionable negligence and the amount recovered in such actions are growing too large.[21] They anticipate that the new rule will be abused and pressed to an extreme.

> Courts and juries become prone to accept as established fact that fright has been the cause of mental or physical consequences which informed medical men of balanced judgment find too complicated to trace. Once a medical expert has been found who, for a consideration, expresses an opinion that the relationship of cause and effect exists, courts and juries tend to lay aside critical judgment and accept the fact as stated.[22]

In conclusion, some order has now been put into a portion of New York law heretofore complicated by numerous exceptions. A claimant can now recover for psychic injury negligently produced without the necessity of bringing himself within one of the exceptions. However, many legal problems lie ahead in the area. For instance, it has been said that an average person does not usually suffer injury from psychic stimuli such as fright; psychic injury is usually the sign of pre-existing disorder.[23] As

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[18] *Id.* at 240-41, 176 N.E.2d at 731, 219 N.Y.S.2d at 37.
[19] *Id.* at 241, 176 N.E.2d at 731, 219 N.Y.S.2d at 37.
[20] *Id.* at 242, 176 N.E.2d at 731-32, 219 N.Y.S.2d at 38.
[21] *Id.* at 243, 176 N.E.2d at 732, 219 N.Y.S.2d at 39 (dissenting opinion).
[22] *Id.* at 244, 176 N.E.2d at 733, 219 N.Y.S.2d at 40 (dissenting opinion).
[23] McNiece, *Psychic Injury and Tort Liability in New York*, 24 ST. JOHN'S L. REV. 1, 78 (1949); Smith, *Relation of Emotions to Injury and Disease: Legal Liability for Psychic Stimuli*, 30 VA. L. REV. 193, 302 (1944).

a rule of law, one should not be responsible for his conduct unless he could have reasonably foreseen that his conduct created an unreasonable risk of danger to a *normal* person.[24] Therefore, it has been said that persons with pre-existing disorders should not recover in these cases at all, or should only recover for damage due to an aggravation of their disorders.[25] Such a viewpoint would answer the objection that to allow recovery would be too dangerous an extension of actionable negligence. New York may find it necessary to lay down some specific restrictions, such as the above, on the new rule.

WILLS—PROBATE OF DESTROYED WILL—INSTRUMENT DESTROYED IN BOMBING RAID HELD "FRAUDULENTLY DESTROYED."—Testator executed a will in Germany, deposited it with a notary and never regained access to it or possession of it. The will was subsequently destroyed in an allied bombing raid, and the decedent, with knowledge of such destruction, failed to revoke the will. Upon testator's death petitioner sought to have the will probated as one fraudulently destroyed under Section 143 of the Surrogate's Court Act.[1] Testator's son unsuccessfully contested the probate of the will in the Surrogate's Court. Upon appeal, the Appellate Division, in reversing the Surrogate's Court, held that the will had not been fraudulently destroyed because of the testator's knowledge of the destruction.[2] In a 4-3 decision, the Court of Appeals, reversing the Appellate Division, *held* that a will is considered "fraudulently destroyed" if its destruction is effected by another without the testator authorizing or directing the destruction. *In the Matter of Will of Fox*, 9 N.Y.2d 400, 174 N.E.2d 499, 214 N.Y.S.2d 405 (1961).

In the absence of statute it is generally held that a properly executed will which has not been revoked by the testator, and

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[24] See Smith, *supra* note 23, at 252-77.

[25] McNiece, *supra* note 23, at 76-79; Smith, *supra* note 23, at 302.

[1] N.Y. SURR. CT. ACT § 143 provides: "A lost or destroyed will can be admitted to probate in a Surrogate's Court, but only in case the will was in existence at the time of the testator's death, or was fraudulently destroyed in his lifetime, and its provisions are clearly and distinctly proved by at least two credible witnesses, a correct copy or draft being equivalent to one witness."

[2] In the Matter of Will of Fox, 9 App. Div. 2d 365, 193 N.Y.S.2d 794 (1st Dep't 1959).