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Heart Attack as a Defense in Negligence Actions

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THE GENERAL RULE in the United States today is that an unforeseen heart attack which leads to loss of consciousness, or to inability to maintain control of a motor vehicle, is not negligence.[1] When an operator of an automobile is suddenly stricken by a heart attack, and as a consequence there is an injury to a person or damage to property, a defense based upon the fact of a heart attack will preclude recovery by an injured plaintiff.[2]

The reason for this rule of law is based upon medical understanding of the nature of the heart. The heart is often compared with a pump. It pumps blood into the lungs, where the blood is purified and receives oxygen additives. Then the blood is pumped into all the other parts of the body, including the heart itself.[3] If the heart fails to function properly, the result often is loss of consciousness or even death.

When the heart, through some fault in itself or in its vessels, fails to maintain adequate cerebral circulation, the result is called a *cardiac syncope*.[4] This often renders the patient unconscious abruptly and without warning. The attack may occur at any time, even though the patient is relaxing, sitting, lying down,[5] or driving a car.

In an article by Dr. Alan R. Moritz[6] he states,

> A person with any form of chronic heart disease, and particularly with arteriosclerotic heart disease, is likely to collapse spontaneously and unexpectedly from sudden heart failure. If the attack of heart failure occurs while the individual is standing, he is likely to fall. If he is driving a car he is likely to lose control of it.

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1 Anno., 28 A. L. R. 2d 35 (1953).

2 Keller v. Wonn, 140 W. Va. 860, 87 S. E. 2d 453 (1955); Harrington v. H. D. Mercantile Co., 97 Mont. 40, 33 P. 2d 553 (1934).

3 Bannen, Traumatic Heart and Vascular Disease—Fact or Fiction?, 441 Ins. L. J. 606 (Oct., 1959); Waugh, Physiology of the Heart, 11 Clev.-Mar. L. R. 233 (May, 1962).

4 Wood, Diseases of the Heart and Circulation 10 (2d ed. 1957). And see, Waugh, *op. cit. supra*, n. 3.

5 Id. at 11.

6 Moritz, Trauma and Heart Disease, 5 Western Res. L. R. 133 (1954).

Dr. Moritz breaks heart disease into three fundamental types:[7] *arteriosclerotic, hypertensive,* and *valvular.* In each type, the propensity of heart failure is a continual possibility. Often the person is completely unaware of his illness, and continues in his routine of life only to die unexpectedly, possibly while lying comfortably at rest in bed.[8]

Because of the unpredictable nature of heart disease, damages which result from its sudden attacks upon the unsuspecting patient often are classified legally with acts of God and unavoidable accidents.[9]

The burden of proof that is placed upon defendant is twofold. He must first prove that the cause of his apparently negligent act was due to the sudden heart attack.[10] This is necessary because plaintiff has usually presented a prime facie case of negligence, based for example on the fact that defendant's car was out of control and ran on the wrong side of the road, or ran off the roadway onto a sidewalk or private property. Evidence of such a physical happening is usually sufficient to show prima facie negligence.

Secondly, defendant has the burden of proving that he had no reason to anticipate, or foresee, that such attack would occur.[11] What constitutes reasonable anticipation can generally be measured by the reasonable man standard. Depending on the particular case, the standard may depend upon whether it was an attack on one of previously perfect health, or an attack on one who has sustained a series of attacks.

The evidence can come from expert medical testimony,[12] from witnesses on the street or at the scene,[13] or even from a subsequent conversation defendant had with his wife.[14] In any event, the burden rests upon defendant, as it rightly should, and should be pleaded in his answer.[15]

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[7] Id. at 137.

[8] Id. at 138-139. And see, Waugh, *op. cit. supra,* n. 3.

[9] Prosser, Law of Torts 117 (2d ed., 1955); Beiner v. Nassau Electric R. Co., 191 App. Div. 371, 181 N. Y. S. 628 (1920). But see, Heart Attack Symposium, 11 Clev.-Mar. L. R. 199-240 (May, 1962).

[10] Lehman v. Hayman, 164 Ohio St. 595, 133 N. E. 2d 97 (1956).

[11] Id.

[12] Pacific Employers Insurance Co. v. Morris, 78 Ariz. 24, 275 P. 2d 389 (1954).

[13] Keller v. Wonn, *supra,* n. 2.

[14] Scott v. Long, 110 Ohio App. 516, 169 N. E. 2d 700 (1959).

[15] Id.

The case of *Pacific Employers Insurance Co. v. Morris*[16] emphasizes the importance of expert medical testimony. That case involved a collision between a truck and a passenger automobile. The truck was proceeding on its side of the road when it was hit head-on by a car approaching on the wrong side of the road. The driver of the car was with his wife, and both were found dead in the car. There was no evidence of skid or scratch marks on the road. There was nothing to indicate that the driver's act was intentional. The driver had a cut on his forehead and his skull was crushed, yet he bled very little (described by witnesses as only "a trickle of blood"). His wife bled profusely. The difference in bleeding caused much comment from witnesses who saw the bodies. No autopsy was performed.

The court concluded that there were only two possible explanations of the driver's action. He was either negligent, or he was dead at the time of the accident. "If he was dead at the time he could not be guilty of negligence . . .," even though his car was on the wrong side of the road.

A prominent local doctor testified that he had treated the driver, aged 70, about three months before the accident, for illness due to influenza and pneumonia. He testified that the patient was in a weakened condition and highly susceptible to heart attack, stroke, or anything which might cause sudden death.

The doctor stated that, in his opinion, the driver was dead before the impact occurred. He based his opinion on the "trickle of blood" evidence. For it is a scientific fact that when the heart ceases to beat, the blood ceases to flow. This was the only logical explanation for the small degree of bleeding from the driver.

Over the objections of plaintiff's counsel, this hypothetical reasoning went to the jury and a verdict for defendant was returned. The Supreme Court of Arizona upheld the case on this issue, but reversed and remanded on other grounds.

Generally, there is no problem in a "heart attack" defense where defendant had no prior knowledge.[17] In such a case, defendant must only show that he acted as a reasonable man and that the attack was unforeseeable.[18]

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[16] *Supra,* n. 12.

[17] Weldon Tool Co. v. Kelly, 81 Ohio App. 427, 76 N. E. 2d 629 (1947); Scatter v. Haley, 52 Ont. L. 95, 3 DLR 156, 11 BRC 1036 (1923). And see *supra,* n. 10, 13.

[18] This rule applies not only to heart attacks, but is generally held to be

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However, the occurrence of an attack will not relieve the patient of the duty he owes to the public, if he had knowledge that such attack might happen at any time.[19] In some states persons likely to become unconscious due to a physical impairment are not permitted a license to drive. In a situation where such a driver loses control of his vehicle, his prior knowledge constitutes negligence.[20]

A patient with a previous medical history of cardiac syncope, who insists on driving a car, makes the roadways unsafe for those who are in legal use of the roadways. The fact that he is likely to lose consciousness at any given moment makes his operation of a motor vehicle not a reasonably prudent act. Therefore, a defendant's knowledge of the infirmity will not relieve him of his duty of care to the public.[21]

A patient with knowledge, whose doctor specifically releases him to go about his normal activities of life and who medically advises that the patient should be allowed to drive, may prove the exception to the rule. The difference here is that the doctor may reasonably believe that the seriousness of the patient's cardiac illness does not warrant a belief that normal automobile driving could precipitate the attack. In any case, the showing of the existence of a physical condition at a prior or subsequent time is evidential.[22] The interim of time over which the evidence may range depends upon the circumstances of each case as to the probability of intervening changes, and is a question to be decided by the trial judge.[23]

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the rule whenever there is a blackout. For example, Cohn v. Petty, 62 D. C. App. 187, 65 F. 2d 820 (1933), held there was no liability for a sudden fainting spell which was unanticipated. See also Edwards v. Ford, 69 Ga. App. 578, 26 S. E. 2d 306 (1943), which sustained a defendant's verdict in an action for death of a guest in defendant's car when defendant, during her menstrual period, suddenly became unconscious without warning, and the collision resulted; Bushnell v. Bushnell, 103 Conn. 583, 131 A. 432, 44 A. L. R. 785 (1925), involving an epileptic fit resulting in paralysis; and, Armstrong v. Cook, 250 Mich. 180, 229 N. W. 433 (1930), involving a sudden fainting spell.

[19] Kreis v. Owens, 38 N. J. Super. 148, 118 A. 2d 420 (1955).

[20] Eleason v. Western Casualty and Surety Co., 254 Wisc. 134, 35 N. W. 2d 301 (1948). This involved a Wisconsin statute prohibiting an epileptic from being licensed to drive.

[21] 5 Am. Jur. 605 (1936); 28 A. L. R. 2d 40 (1953).

[22] 2 Wigmore, Evidence, 8 (2d ed., 1940).

[23] Id.

The cited rules also apply to cases where the injured party is a guest in the defendant's car. The situation where the accident occurs without knowledge or warning will preclude recovery by a guest.[24] However, where there is notice, the driver may be held liable for gross negligence to his guests. In states where it is applicable, he may be liable within the meaning of the state's guest statute.[25]

In the case of agency, where the agent has knowledge but the principal has not, the negligence of the agent may not be imputed to the principal. In the case of *General Electric Co. v. Ress,*[26] appellant's driver died of myocardial infarct while driving a bus in the employment of the appellant. The bus went out of control and caused injury and property damage to the appellee. The driver knew of his infirmity, but did not believe that there was even remote danger in the operation of the bus in his state of health. The driver had been absent from work prior to the accident because of his myocardial illness. Upon returning to work, the driver had been examined by a doctor employed by the appellant.

In holding for the appellant, the court stated that an employer owes no duty to the general public to have a doctor examine its bus driver when the bus driver returns to work after having been ill. Therefore, the employer could not be held liable for injuries to the defendant after the bus driver suffered the fatal heart attack. The doctrine of respondeat superior did not apply.[27]

There are instances where a driver with knowledge of his condition can have his negligence imputed to another. An example of this is where the wife of a heart patient knows that her husband is susceptible to heart attack at any given time, and yet she permits her husband to drive a car titled or owned in her

[24] 4 Blashfield, Cyclopedia of Automobile Law and Practice, 469 (perm. ed., 1946).

[25] Bridges v. Spear, 79 So. 2d 679 (Fla. 1955).

[26] General Electric Co. v. Rees, 217 F. 2d 595 (9th Cir., 1954).

[27] In Wishbone v. Yellow Cab Co., 20 Tenn. App. 229, 97 S. W. 2d 452 (1936), the driver for defendant company lost consciousness due to an epileptic attack and thereby had an accident which injured plaintiff, a paying passenger in the cab. The driver knew he had had several attacks which rendered him unconscious prior to the one in suit. Here the court held defendant company liable for the damages to plaintiff for the negligent selection or retention of the driver, but held that the driver was not responsible, as a driver seized by an epileptic fit cannot be held negligent for the way in which he controls his automobile.

name. In such a case, a resultant claim for injuries, against the wife for her negligent entrustment of her car, will state a cause of action.[28]

Another area for consideration is the instance where the degree of the attack does not render the patient unconscious. In such a case, the driver could still lose control of the car and cause damage. In these cases, the same rules mentioned above would be applicable.[29] However, if a driver seized with an attack does not lose consciousness, the severity and degree of disablement may be weighed to determine if the driver should have been able to bring the automobile under control and to a safe stop. This is an issue for the jury.[30]

There may be instances where the issue is the fact of consciousness itself. In such cases, it is always left for the jury to determine.[31] In the case of *Shirks Motor Express v. Oxenham,*[32] a truck owned by plaintiff veered to the right and struck defendant's parked car. It was alleged by plaintiff that their driver was seized by a convulsion which rendered him helpless. Some hours after the accident, the driver died of an occlusion of a carotid artery. The driver's past health record had been excellent. There was evidence offered by both sides as to whether the driver was seized before or after the collision. The court held that the issue being the exact time when the convulsion occurred, this was a question for the jury to determine.

Although it is recognized that claims of unforeseen unconsciousness in automobile collision cases are subject to the possibilities of fraud, it is also recognized that it is up to the jury

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[28] Schneider v. Van Wyckhouse, 54 N. Y. S. 2d 446 (Sup. Ct., 1945).

[29] See Thayer v. Thayer, 286 Mich. 273, 282 N. W. 145 (1938). Defendant had had notice of stomach pains earlier in the day but continued to drive as the pains subsided. Suddenly, the pains were of such a degree that, although he did not lose consciousness, he lost control of his car and ran into a ditch. The court held that this was not gross negligence, nor wilful and wanton misconduct under the Michigan Guest Statute. They reasoned that the pains defendant had experienced "do not necessarily put one on notice" that he would be rendered unable to control his car. In Livaudais v. Black, 13 La. App. 345, 127 S. 129 (1930), a driver suddenly went blind due to defective vision brought on by systemic infection or organic disorder. Judgment for defendant driver. And, as to sudden emergency, Komfar v. Millard, 179 Wis. 79, 190 N. W. 835 (1927), makes the question of a bug hitting the face of a driver one for the jury to determine whether the circumstances deserved the verdict of not guilty of negligence.

[30] Lagasse v. Laporte, 95 N. H. 92, 58 A. 2d 312 (1948).

[31] Moore v. Cooke, 264 Ala. 97, 84 So. 2d 748 (1956).

[32] 106 A. 2d 46 (Md. App., 1954).

whether to believe or disbelieve the defendant's evidence.[33] If the jury rejects the defense and holds for the plaintiff, the higher courts will be reluctant to reverse.[34]

In *Waters v. Pacific Coast Dairy, Inc.*,[35] defendant's driver claimed that he had had a heart attack and that that had caused him to lose consciousness, resulting in an accident which caused plaintiff's decedent to die. He (the driver) was taken to a hospital immediately after the accident and was told that his heart was all right. The next day he went to his family doctor who told him that his heart was all right. Several days later he went to a clinic and again was told that his heart was all right. The driver had no other attacks or heart trouble, before or after the accident. In holding that defendant did not overcome the presumption of negligence presented by plaintiff in showing that defendant's truck was on the wrong side of the road, the court held that defendant had failed to show the "nature of the attack, nor the cause thereof, nor that he had no reason to anticipate such an attack." Judgment was for the plaintiff.

Thus, it can be seen that the laws dealing with heart attack cases are governed by the reasonable man standard. It would be grossly unfair to hold one negligent for actions that are beyond foreseeability. It would also be unfair to bar recovery of one injured when the heart attack victim knew, or should have known, that his very presence behind the wheel was in utter disregard of the public safety.

In preparing a defense for such an action, the standards followed by each community must be kept foremost in the mind of the defendant. His obligation to meet and surmount the burden will depend largely upon his medical evidence, and upon his conduct prior to the accident. The burden of proof should remain on the defendant in order to secure the public safety.

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[33] Lehman v. Hayman, 104 Ohio App. 198, 147 N. E. 2d 870 (1957).

[34] Barber v. Howard Sober, Inc., 269 App. Div. 1008, 58 N. Y. S. 2d 465 (1945). See also Ford v. Carew & English, 89 Cal. App. 2d 199, 200 P. 2d 828 (1948), where there was medical evidence to prove that the cause of the attack which rendered the driver helpless was strained heart muscles. The jury believed this and held for defendant. The verdict was affirmed on appeal.

[35] 55 Cal. App. 2d 789, 131 P. 2d 588 (1942).