1075 LOOKOUT: GUEST

A guest (passenger) in an automobile has a duty to exercise ordinary care for his or her own safety. This duty requires a guest to exercise ordinary care in maintaining a proper lookout to warn the driver of any danger of which the guest has reason to believe the driver may not be aware.

A guest (passenger), however, is not bound to maintain the same degree of diligence in keeping a lookout as is required of the driver of the car, because a passenger does not have the responsibility of operating and controlling the automobile. However, the fact that the passenger is not in charge of operating the automobile does not relieve the passenger from all duty to use care for his or her own safety. The passenger's duty with respect to lookout is to exercise that care and caution which a person of ordinary intelligence, care, and prudence would use while riding in the same passenger seat of the automobile as the plaintiff and under the same or similar circumstances as exist in this case.

COMMENT

The instruction and comment were revised by the Committee in 1982. The comment was reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. An editorial correction was made in 1996.

Theisen v. Milwaukee Auto Mut. Ins. Co., 18 Wis.2d 91, 118 N.W.2d 140, 119 N.W.2d 393 (1962); Davis v. Allstate Ins. Co., 55 Wis.2d 56, 197 N.W.2d 734 (1972); Sulkowski v. Schaefer, 31 Wis.2d 600, 143 N.W.2d 120 (1966); Baker v. Herman Mut. Ins. Co., 17 Wis.2d 597, 606, 117 N.W.2d 725 (1962).

Romberg v. Nelson, 8 Wis.2d 174, 178, 98 N.W.2d 379, 381 (1959), quoting from Vandenack v. Crosby, 275 Wis. 421, 434, 82 N.W.2d 307, 313 (1957), and Tomberlin v. Chicago, St. P., M. & O. Ry., 208 Wis. 30, 33, 243 N.W. 208 (1932), recognizes that the duty of the passenger as to lookout is not the same as the duty upon the driver and that the negligence of the passenger depends upon the circumstances of each case and hence is generally a jury question.

Teas v. Eisenlord, 215 Wis. 455, 460, 253 N.W. 795, 797 (1934), states that if a guest saw or should have seen danger and it was apparent to the guest that the driver intended to do nothing to avoid danger, the guest has an absolute duty to warn. See also St. Paul Fire & Marine Ins. Co. v. Burchard, 25 Wis.2d 288, 294, 130 N.W.2d 866 (1964).

A passenger has a right to assume that a driver will obey a stop sign. Lewis v. Leiterman, 4 Wis.2d 592, 597, 91 N.W.2d 89, 92 (1958). Also see Le Mere v. Le Mere, 6 Wis.2d 58, 61, 94 N.W.2d 166, 168 (1959).

Goehmann v. National Biscuit Co., 204 Wis. 427, 430, 235 N.W. 792, 793 (1931), states that a guest has no duty with reference to the momentary management and control of the car by the driver. Lampertius v. Chmielewski, 6 Wis.2d 555, 559, 95 N.W.2d 435, 436-37 (1959), quoting from Vandenack v. Crosby, supra, points out that a guest is held to a lesser degree of care than a driver and a back seat guest is held to a lesser degree than a front seat guest.

An automobile passenger is not held to the same degree of care with respect to lookout as is the driver. Sulkowski, supra at 604; Baker v. Herman Mut. Ins. Co., 17 Wis.2d 597, 606, 117 N.W.2d 725 (1962). A passenger's failure to see developing danger does not always raise a jury question as to negligence with respect to lookout. See Sulkowski, supra, and Lampertius, supra.

The guest is ordinarily chargeable only with "passive" negligence, i.e., negligence causal not of the collision but of the guest's injuries. Hoeft v. Friedel, 70 Wis.2d 1022, 1037, 235 N.W.2d 918 (1975). In Hoeft, however, the passenger acted as an instructor to an inexperienced driver.

The court said, in such a case, the issue of "active" negligence arises and the jury must be instructed as to the passenger's duties which extend beyond the mere obligation to exercise ordinary care for his or her safety. The instructor has the duty to use reasonable care to prevent injuries to others from the operation of the automobile. Liability of the instructor in Hoeft was based not upon an imputation of the driver's negligence to the instructor but upon the failure of the instructor in the exercise of his independent obligation of reasonable care. The trial court erred by failing to instruct the jury on the independent duty of the instructor to supervise and control the automobile.

For a discussion of the distinction between "active" negligence and "passive" negligence, see Comment to Wis JI-Civil 1047.1.

For formulation of special verdict questions in this area, see Theisen, supra at 104-08.