

NEGLIGENT CONDUCT ON THE PART OF THE PLAINTIFF WHICH CONTRIBUTES TO THE NEGLIGENT CONDUCT OF THE DEFENDANT IN CAUSING INJURY

Fact Pattern:

On May 6, 2002, Reginald Badger died of lung cancer at the age of 63. Reginald had worked for more than 30 years as a boiler maker at a dockyard in California, where he was exposed to asbestos dust and fibers. Following Reginald's death, his wife filed a civil lawsuit against the dockyard, claiming negligence for not taking steps to protect its employees from the cancer-causing substance. After Mrs. Badger was awarded more than \$65,000 in general damages, and nearly \$165,000 in special damages, the dockyard claimed a defense of contributory negligence. Making the point that Reginald had smoked about 20 cigarettes per day for many years, even though he knew, or should have known, that smoking causes, or contributes to, cancer, he was at least partially negligent. The dockyard claimed that Reginald was contributory negligent and should be barred from any recovery because of this negligence.

The California court took into consideration a great deal of evidence and testimony, including expert testimony, before reaching a decision as to contributory negligence. In the end, Reginald was deemed to be 20 percent at fault and had some culpability for the demise of his health, and Mrs. Badger's award was reduced by that amount.

Question:

Did the negligent behavior of the injured plaintiff contribute to the harm he suffered?

Rule

Contributory negligence is relevant to the determination of liability and is applicable when plaintiffs/claimants have, through their own negligence, contributed to the harm they suffered. The legal effect of contributory negligence on the award for damages will be determined by statute.

Discussion

Contributory negligence is available as a defense to a civil lawsuit for negligence. This defense does not apply to any situation in which the defendant's conduct amounts to malicious, reckless or intentional wrongdoing as there is increased culpability of the defendant and should not benefit from merely negligent conduct of the plaintiff. In U.S. law, the burden of proof for contributory negligence sits squarely on the shoulders of the defendant to prove to the court that the plaintiff was also negligent, contributing to his own injury or damages.

A court is given vague guidance in the assessment of damages and determining the share of responsibility between the defendant and the plaintiff. The more blameworthy the conduct, the greater share of responsibility, but the argument for contributory negligence must be made by the defendant. If Court proceedings have been started a defendant must put forward its argument of contribution in its defense.

In determining whether or not there is contributory negligence on the part of a plaintiff, the court uses the same standard of care as other types of negligence: did the plaintiff do everything that any other reasonable person would have done under the same or similar circumstances? Any act or failure to act on the part of the plaintiff that can be seen as a proximate cause of the plaintiff's damages, amounts to contributory negligence. Any act which, while increasing or adding to the damages, did not cause the incident, is not usually considered contributory negligence for the purpose of precluding an award for damages.

Currently, there are 4 states that are considered "pure contributory negligence" states in the U.S. This means that a damaged party cannot recover damages if it is even 1% at fault. The pure contributory negligence defense has been criticized for being too harsh on the plaintiff, because even the slightest amount of contributory negligence by the plaintiff which contributes to an accident bars all recovery no matter how egregiously negligent the defendant might be. These states include Alabama, Maryland, North Carolina and Virginia. The District of Columbia recognizes the Pure Contributory Negligence Rule, although the District of Columbia applies a Modified Comparative Fault 51% Bar Rule for pedestrians and bicyclists as of 2016.

Outcome

California is a 'pure comparative fault' jurisdiction in that the money damages awarded will be decreased by the percent at fault so that if a plaintiff who was 90% to blame for an accident could recover 10% of his losses.

Ex:

Drunk Apple employee making 1 million a year crosses the street at night outside of a crosswalk and is hit by FedEx Truck. Attorney independent investigation through its own experts determine that FedEx Truck was going 10 mph over the speed limit and if truck was going the speed limit would have been able to avoid hitting Drunk Apple employee. Lost Wages is determined to be 18 million dollars by economist and future medical care is determined to be 2 million dollars from a Certified Life Care Planner.

Drunk Apple Employee found to be 80% at fault. Drunk Apple Employee receives 4 million dollars.