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AUTOMOBILES: The owner of the car is liable for damages to a hitch-hiker provided the hitch-hiker is not guilty of contributory negligence. The owner of a car owes a hitch-hiker the same degree of care as any other person, that is, the highest degree of care.

March 12, 1936.

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Honorable Harry McGee
Warrenton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of February 24, 1936, as follows:

> "Will you please give me an opinion on the following situation? If a person picks up a hitch-hiker and later has an accident and injures this hitch-hiker can the hitch-hiker hold the driver of the car liable for any damages?
>
> "Thanking you for this information, and with kindest personal regards, I am."

Section 7775, Revised Statutes Missouri, 1929, in part, provides:

> "Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person * * * *."

The above statutory provision requires that the degree of care to be exercised in driving an automobile is the highest degree of care. In this State the law requires the operator of a vehicle on the highways to exercise the highest degree of care so as to not endanger the life or limb of any person.

By virtue of this statutory provision regardless whether the occupant be an invited guest or uninvited guest riding with the consent of the operator, or a licensee, or invitee and is not a trespasser, the same degree of care is required in each and every instance. This is further supported by the following decisions rendered by the Supreme Court of this state in Junior Wilson, by next friend Foster Wilson v. Thompson 72 S. W. (2d) 1001, 335 Mo. 375.

The court held in the above case that in an accident for damages an instruction which authorized a verdict for defendant, if the jury should believe that he was in the exercise of due care in driving his automobile, was erroneous. Due care is ordinary care and the driver of an automobile was required to exercise the highest degree of care.

Likewise, in Kaley v. Hantley 63 S.W. (2d) 21, l. c. 26, the court said:

> "Our attention is directed to the case of Alley v. Wall (Mo. App.) 272 S.W. 999, 1002, as holding, as we find that it does hold, that the care due from a host to a guest is reasonable care. If by reasonable care was meant ordinary care - and those terms are sometimes, though inaccurately if by way of definition, used interchangeably, but neither of which is a sufficient designation of the highest degree of care - that holding is disapproved."

In the above case the court further said:

> "We regard the following general statement of duty of a guest as laid down in Berry on the Law of Automobiles (6th Ed.) Volume 1, Section 665, as correct and as applicable to the duty of the plaintiff in the situation in which she was placed: 'When dangers, which are either reasonably manifest or known to an invited guest, confront the driver of a

> vehicle, and the guest has an adequate and proper opportunity to conduct or influence the situation for safety, if he sits by without warning or protest and permits himself to be driven carelessly to his injury, this is negligence which will bar recovery."

The following is required for contributory negligence to defeat recovery: (269 S.W. 690) Chapman v. Mo. Pac. Ry.).

> "In order for plaintiff's contributory negligence to defeat recovery, such negligence must have formed the direct producing and efficient cause of the collision would not have happened. Conrad v. Hamra (Mo. App.) 253 S. W. Loc. cit. 811, and cases there cited. We are of the opinion that plaintiff's negligence, under the facts at bar, was a question for the jury."

Haddy Ency. of Automobile Law, page 217, Vol. 5-6. The general rule of law is:

> "When the occupant of an automobile, other than a trespasser, is injured through the operation of the machine and the driver was negligent and the occupant was not guilty of contributory negligence, the latter may, as a rule, maintain an action against the driver and recover compensation for his injuries, <u>provided, of course, that the driver was guilty of negligence</u> which was the approximate cause of the accident."

The above decision and rule of law merely defines contributory negligence as laid down by the courts of this state. If such occupant of the automobile be guilty of same he is barred from recovery in case of accident.

In Wurtzburger v. Oglesby 222 Ala. 151, 131 So. 9, the Court refused to accept the distinction between a guest specifically invited by the owner to ride and guests who had at least invited negotiations leading up to the invitation.

In Robinson v. Leonard 100 Vt. 1, 134 Atl. 706, the court said:

> " A person riding with the knowledge and consent of the driver or owner is no less a guest because he asked for the privilege of doing so. The same obligation of care is imposed upon the driver as in the case of one expressly invited by the latter."
>
> "Our courts, however, have never adopted the doctrine that an automobile is such a dangerous instrumentality as to render the operator or owner thereof liable for an injury resulting from its operation, in the absence of negligence in the operation."

Hall v.Compton 130 Mo. App. 675, 108 S. W. 1122 and State v. Miller (Mo. Sup) 234 S.W. 813.

## CONCLUSION.

In view of the decisions hereinabove cited, it is the opinion of this department that when a hitch-hiker is permitted to ride with the owner of an automobile, he becomes an invited guest, and the owner of the automobile becomes liable under the following conditions: When dangers which are reasonably known to the guest confront the owner of the automobile and the guest has an adequate or proper opportunity to inform said owner as to the proper conduct for safety, if said guest sits idly by without warning or protest and permits the owner of the car to drive carelessly to the injury of the invited guest, then the invited guest is guilty of contributory negligence, and the owner of the automobile is not liable.

The fact that the hitch-hiker requests the privilege of riding and is not invited in the first instance, by the owner of the automobile to ride, does not in any wise reduce or change the obligation of the owner of the car to the hitch-hiker. Thus, in the absence of contributory negligence on the part of the hitch-hiker, the owner of the car owes to said hitch-hiker the exercise of the highest degree of care, and if the automobile owner is guilty of negligence, he becomes liable.

Respectfully submitted

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APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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