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Res Judicata—Personal Injury and Vehicle Property Damage Arising from a Single Accident

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RES-JUDICATA — PERSONAL INJURY AND VEHICLE PROPERTY DAMAGE ARISING FROM A SINGLE ACCIDENT

The following situation illustrates a common occurrence in Nebraska: X suffers personal injuries and his car is damaged as a result of an automobile accident. The first question which arises is whether X has one, or more than one, cause of action. If the cause of action is single, then a judgment on the property damage claim is a bar to a later action for the personal injury and vice versa. This is so because the rule against splitting a single cause of action makes the judgment in the first proceedings res judicata in the second. A second question arises if the insurer reimburses X for his property damage loss and thereafter sues as subrogee. Does a

[30] *Cf.* Greene v. McElroy, 360 U.S. 474 (1959). See also Note, 26 TEMP. L.Q. 70 (1952); Jones, *Congress and Television: A Dissenting Opinion,* 37 A.B.A.J. 392 (1951).

judgment in an action by an insurer for property damage prevent a subsequent action by the assured against the wrongdoer for personal injuries?[1] Neither of these questions has been decided by the Nebraska Supreme Court.

The majority rule is that a single wrongful act causing injury to the person and to the property of the same individual constitutes but one cause of action with separate items of damage. A recovery of judgment for either bars a later action to recover for the other.[2] Under this rule plaintiff's legal expenses are reduced by having only one trial and he is not as subject to delays in enforcing his rights. Also, simplicity in deciding controversial rights is achieved and the defendant is not subject to vexatious litigation.[3] Courts following this view take the position that only one cause of action is necessary and subsequent actions based upon the same accident are barred by the doctrine of res judicata.[4] It should be noted that two of the generally accepted tests for application of the res judicata doctrine are absent under the majority rule:[5] (1) evidence to support the two causes of action must be identical, and (2) there must be a single right violated.

The minority rule is that a wrongful act involving both personal injury and property damage gives rise to two causes of action.[6] This rule, which originated in England,[7] is gaining recognition in this country.[8] Numerous reasons are given in support of the minority view. First, two distinct legal rights are infringed, the property

[1] In many jurisdictions it is held that when the amount paid by an insurer covers its assured's entire loss, the insurer is then considered the real party in interest. When an assured's loss exceeds the payment from his insurance carrier, the right of action against the wrongdoer for the whole loss remains in the assured. See Shiman Bros. & Co. v. Nebraska National Hotel Co., 143 Neb. 404, 9 N.W.2d 807 (1943). However, the defendant may waive his objection that not all real parties in interest are named as plaintiffs. See Kessner, *Real Party in Interest,* 39 NEB. L. REV. 452, 458-59 (1960).

[2] This view is supported by a long list of authorities. The cases are collected in Annot., 62 A.L.R.2d 977 (1958).

[3] See, *e.g.,* King v. Chicago, M. & St. P. Ry., 80 Minn. 83, 82 N.W. 1113 (1900).

[4] See, *e.g.,* Rush v. City of Maple Heights, 167 Ohio St. 221, 147 N.E.2d 599 (1958).

[5] See Moschzisker, *Res Judicata,* 38 YALE L.J. 299, 310-15 (1929).

[6] The cases are collected in Annot., 64 A.L.R. 663 at 670 (1929).

[7] Brunsden v. Humphrey, [1884] 14 Q.B.D. 141.

[8] See, *e.g.,* Public Service Co. of Indiana v. Dalbey, 119 Ind. App. 405, 85 N.E.2d 368 (1949); Carter v. Himkle, 189 Va. 1, 52 S.E.2d 135 (1949).

right and the right of personal security.[9] Second, different rules of damages determine the measure of recovery for the two injuries. The amount of recovery for the property injury is generally the cost of repairing the damaged automobile[10] while the amount of recovery for the personal injuries is governed by the extent of the injuries, cost of medical aid, loss of wages, and other related factors.[11] Third, in the property action, the plaintiff must show that he has title to the damaged property, but this issue, of course, does not arise in a personal injury claim. Fourth, the claim for property damage is assignable and survives the owner's death[12] while the personal injury claim is not assignable and in some jurisdictions it abates at the death of the injured person.[13] Fifth, the statutes of limitations affecting assertion of a property claim or a personal injury claim are different in many states, although not in Nebraska.[14] Finally, the nature of the interest imperiled by a tortious act must be a factor in determining the existence or non-existence of negligence. Jurisdictions adopting the minority principle do so because of these different rules. In *Reilly v. Sicilian Asphalt Paving Co.*,[15] the New York Court of Appeals followed this reasoning when it allowed the plaintiff to institute two separate actions for one tortious act.

Some states which have adopted the majority rule make an exception when an injured party accepts payment from his insurance company for his property damage and thereafter a judgment is recovered by the insurance company against the tortfeasor. In this situation, the injured party is not barred from later bring-

[9] See, *e.g.*, Clancey v. McBride, 338 Ill. 35, 169 N.E. 729 (1929).

[10] Wylie v. Czapla, 168 Neb. 646, 97 N.W.2d 255 (1959).

[11] Peacock v. J. L. Brandeis & Sons, 157 Neb. 514, 60 N.W.2d 643 (1953).

[12] NEB. REV. STAT. § 25-1401 (Reissue 1956).

[13] *But see* Hindmarsh v. Sulpho Saline Bath Co., 108 Neb. 168, 187 N.W. 806 (1922). *Held:* Action for personal injuries wrongfully inflicted does not abate upon death of the injured party but may be revived and continued by the deceased's personal representative.

[14] The statutes of limitations for property damage and personal injury claims are both four years in Nebraska. NEB. REV. STAT. § 25-207 (Reissue 1956).

[15] 170 N.Y. 40, 62 N.E. 772 (1902). The court said, ". . . for reason of the great differences between the rules of law applicable to injuries of the person and those relating to injuries to property, we conclude that an injury to person, and one to property, though resulting from the same tortious act, constitute different causes of action." The court also noted that at common law, the distinction between torts to the person and torts to property has always been followed. *Id.* at 45, 62 N.E. at 774.

ing a separate action for his personal injuries.[16] One rationale is that after the insurer has paid the property damage claim and become subrogated to the injured party's rights, it alone is the real party in interest for the purpose of maintaining an action against the wrongdoer for the property damage. The personal injury claim is then considered a separate cause of action and thereby eludes the doctrine of res judicata. Thus the doctrine is avoided when its application would defeat basic principles of administering justice. Some courts, however, do not allow two separate actions in the subrogation cases;[17] but they nevertheless permit the insurance company to be a party to the suit by the injured plaintiff against the wrongdoer.[18] Under this view any judgment for the plaintiff will compensate the insurer for its property claim payment and also compensate the insured for his personal injuries.

It appears that the Nebraska Supreme Court will be confronted with the problem of deciding whether to allow two actions for a single motor vehicle accident, or to allow only one action, and bar the second action by applying the doctrine of res judicata. The majority rule, allowing only one cause of action, might logically be adopted by the Nebraska Supreme Court because two of the main reasons for adopting the minority rule are absent in this state. First, the Nebraska statutes of limitations covering property damage claims and personal injury claims are identical, and second, both

[16] See, *e.g.*, Underwriters at Lloyd's Ins. Co. v. Vicksburg Traction Co., 106 Miss. 244, 63 So. 455 (1913).

[17] For example, in Sprague v. Adams, 139 Wash. 510, 513, 247 Pac. 960, 963 (1926), the Washington Supreme Court stated: "Contention is further made in behalf of appellant rested upon the theory that the insurance company became subrogated to the rights of the appellant to the extent that the insurance company would have the right to prosecute the action in her name for the damage to her automobile. The fallacy of this contention . . . lies in the fact that whatever subrogation rights the insurance company acquired were necessarily acquired by it by contract with appellant. She could no more split her cause of action and thus prejudice the right of respondents to answer for their single tort in a single action than she could accomplish that end by direct assignment of a portion of her cause of action, and this she could not do any more than she could split the cause of action by herself commencing and prosecuting separate actions for each separate item of damage. . . . Our inquiry here is not what rights the insurance company may have so acquired in appellant's claim of damage with respect to her automobile as between herself and the insurance company, but it is a question of whether or not respondents shall be subjected to more than one suit for their single tort."

[18] See, *e.g.*, First Nat. Bank of Wayne v. Gross Real Estate Co., 162 Neb. 343, 75 N.W.2d 704 (1956).

actions survive the death of the injured party.[19] The minority rule, however, would separate the rules of law applicable to personal injuries and those relating to property damage, thereby reducing the confusion their differences create in the minds of the jury. This may result in jury verdicts which more nearly approximate a plaintiff's actual damages.

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[19] *But cf.* Finnerty v. Consolidated Tel. & Elec. Subway Co., 82 N.Y.S.2d 529 (Sup. Ct. 1948). The New York Supreme Court rejected the contention that the minority rule was no longer applicable in the state because of the elimination of a statutory provision to the affect that a cause of action for personal injuries abated upon death of the injured party before said party had recovered a verdict.