Who's Liable When Accidents Happen at Golf Clubs?

By LESLIE CHILDS

A GOLF club's liability for injury to a person hit by a ball driven upon its course, is clearly one of several angles. The club may or may not be liable, depending upon the facts and circumstances surrounding the accident as well as the relationship of the parties involved between themselves and the club.

In the light of which, the subject may perhaps best be approached through the medium of brief reviews of decided cases in which different phases of the question have been considered. With this in mind, a recent case that dealt with the liability of a club for an injury of this kind may serve as a starter.

Member's Guest Struck by Ball.

Here, the plaintiff was invited by a member to visit the club with the view of becoming a member. The club as such, however, had nothing to do with the invitation. Plaintiff, accompanied by his wife and brother accepted the invitation. Upon their arrival at the club house, W., their host, undertook to show them over the course and during the course of the tour plaintiff was struck and seriously injured by a ball driven by a member of the club. Owing to the confusion and the number of people playing at the time the member who had driven the ball that struck plaintiff was not identified.

Plaintiff thereafter brought the instant action for damages against the club, as such, and against W., his member host. Plaintiff's action was grounded upon the theory that (1) the club was liable because of its ownership of the ground upon which he was injured while lawfully thereon as a guest of a member, and that (2) his host, W., was liable because of his failure to warn the plaintiff of the danger of being struck by a ball while inspecting the grounds.

On the foregoing facts, the trial court held plaintiff was not entitled to recover against either defendant, and thereupon entered a nonsuit to the action. Plaintiff appealed, and the higher court in disposing of the case against the club, in part said:

"The evidence does not connect the corporate defendant (club) with the transaction. * * * Mere ownership of a golf course does not impute liability for an injury suffered by another from a golf ball driven by a player. The nonsuit as to the (club) was obviously correct."

Then turning to the question of the liability of W., the member who had invited plaintiff upon the course, the court reasoned:

Member Held Not Liable.

"The plaintiff was there to 'see the golf links.' There was no invitation other than that. It can scarcely be argued that golf links should be kept free of driven balls. It follows that a person who enters upon the links is necessarily subject to whatever danger that fact entails. Nor is it ordinarily practicable to see a set of links without going upon them. Nevertheless, a golf course is not usually considered a dangerous place, nor the playing of golf a hazardous undertaking.

"It is a matter of common knowledge that players are expected not to drive their balls without giving warning when within hitting distance of persons in the field of play, and that countless persons traverse golf courses the world over in reliance on that very general expectation. Their is no testimony to sustain a finding that W. (the plaintiff's host) was aware, or that there were circumstances to put him on notice, that anyone on the grounds would, without signaling and in violation of that common rule of action, drive his ball into the group of three persons of whom W. and the plaintiff were two. Under those circumstances we find no negligence in that he did not warn the player. * * *

"We think that the law does not require warnings against such unusual and chance incidents to accompany the giving of an invitation to do that, not inherently dangerous, which is a widely accepted phase of contemporaneous life and which the ordinary person thoroughly understands the significance of. * * * The judgment below is affirmed." (151 A. 434)

The foregoing case has been quoted from

at some length because it fairly illustrates the rule of liability for accidents of this kind. In such cases there can be no ground for holding the club liable for the negligence of its members which results in injury to other members or their guests, unless the club has in some manner been at fault. So too, the liability of one member to another member or his guest must be predicated on the same ground.

Of course, in this case, had the member who drove the ball that caused the injury been identified the question of whether or not he had been negligent could have been raised. If the answer was "yes," there could be no doubt of his liability for the injury. This phase of the subject may be illustrated by the following.

Caddie Struck by Hooked Ball.

In this case, B, a member of a golf club, invited H. to his club and they started around the course. Plaintiff, a caddie, was assigned to B. by the caddie master and another caddie was assigned to H. After they had played sixteen holes, H. drove from the seventeenth tee for a distance of about 120 yards and his ball landed in the center of the fairway. B. then drove 100 feet beyond H. but landed in the rough to the left of the fairway. They then started for their balls, but before B. and his caddie, the plaintiff, had reached their ball H. drove but did not shout "fore" until after his ball was in the air. H. hooked the ball, and it struck plaintiff, B.'s caddie, in the eye, causing a serious injury.

Member Held Negligent.

Plaintiff thereafter brought the instant action for damages against both the club and H. At the close of the case, plaintiff dismissed his action against the club, no doubt realizing that it was in no way liable. Judgment was, however, rendered against H. for $6,000, on the ground that his failure to call "fore" in time to enable the plaintiff to dodge the ball was negligence. In affirming this judgment, the higher court reasoned:

"The charge of negligence against defendant H. is that he drove his ball towards plaintiff without warning him. Plaintiff, as was his duty, had proceeded on beyond H. toward the point where B.'s ball lay, and was yet 25 feet from his destination, and at the edge of the fairway, when injured. The evidence disclosed that it was customary for a golf player before driving to call 'Fore' when some other person was in the direction in which the ball was to be driven * * * .

"According to the testimony of H. himself, * * * such warning was not given until after the ball had been struck, when he observed that plaintiff was in the path of it. Under such circumstances we think it was clearly for the jury to determine whether or not defendant H.'s conduct was such as to meet the test of ordinary care. * * * Judgment affirmed as to defendant H." (286 S. W. 865)

So much for the foregoing cases which are fairly illustrative of the reasoning of the courts in placing liability for accidents of the kind here involved. However, it will be noted that in neither of the foregoing cases was there occasion for the application of liability under a Workmen's Compensation statute. But in dealing with the subject in hand, statutes of this kind are deserving of some attention for where injury is suffered by an employe of a golf club, in the course of his employment, the club may be liable thereunder.

For example, if a caddie or other employe was injured by being struck by a ball he would no doubt have the option of proceeding against the club under a workmen's compensation statute, if one was in force, or against the member or other person who drove the ball. This is the general rule in cases of this kind. But, under this rule, an injured employe must elect; he cannot pursue both the person who caused him the injury and his employer also.

The books do not appear to contain a case of this kind where the injury complained of resulted from being struck by a golf ball, but resort may be had to an analogous situation in illustrating how the courts have reasoned on the subject. For this purpose, let us take a case handed down by the Illinois Supreme Court, and reported in 140 N. E. 871, which arose under the following facts.

Caddie Struck by Automobile.

Here, the claimant was a boy 12 years of age and worked for a golf club as a caddie. On a certain day he reported for work, but was not called because there were other caddies with numbers ahead of him. When it became apparent that he would not be called that day, he started to leave the grounds, and was struck by an automobile within a few feet of the clubhouse. His injuries were serious, and he proceeded against the club under the Illinois Workmen's Compensation statute.

The club defended on the ground that claimant was not in its employ when in-

jured. In denying this contention the court said:

"The testimony of the claimant is that he was working for the ——— —— Club; that he did not work for any other club. It appears that the boys were under the control of the caddie master, who called them when needed. It was a part of the function of the club to furnish caddies for players. The caddies reported to the caddie master, and were under his direction. Whether the club paid the caddies and afterwards collected from the players, or the players themselves paid the caddies in the first instance, the caddies were still employes of the club."

But, even so, the club contended that claimant at the time of his injury was not engaged in the course of his employment, but was leaving the clubhouse for his home. From which it was contended that his injury was not received in the course of his employment. In answering this, and in awarding claimant compensation, the court reasoned:

Claimant Entitled to Payment.

"It is not essential to the right to receive compensation that the employe should have been working at the particular time when the injury was received. The employment is not limited to the exact moment when he begins work or when he quits. An injury accidentally received on the premises of the employer by an employe while going to or from his place of employment by a customary or permitted route, within a reasonable time before or after work, is received in the course of and arises out of the employment."

From the foregoing it is obvious that a golf club must assume the usual risks of liability for injuries received by its employees, under workmen's compensation statutes where it operates within the coverage of a law of this kind. And now let us turn to another phase of the subject—liability of a club for injury to a third person, one who is neither a member or employe of the club.

Here again, a search has failed to disclose any American authority directly in point. However, the question has been passed upon by the English courts, and in 38 Times Law Reports 615 we find a case of this character that arose under the following facts.

Plaintiff, a cab driver, was passing along a road that ran parallel to the 13th hole of the defendant's golf course. At this time Mr. C., a member of the defendant

club, drove from the tee, sliced his ball and it struck plaintiff in the left eye, resulting in the loss of that member. Plaintiff brought suit against both the club and Mr. C. The latter did not defend the action, and the plaintiff in making his case against the club introduced evidence that tended to show that the way the course was laid out, in respect to the highway, the 13th tee was a positive danger to people passing on the highway. In upholding this contention and in holding the club liable, the report of the case recites as follows:

What the Court Decided.

"His Lordship gave judgment for the plaintiff against both defendants, awarding him £450 damages and costs. He said that the Sandwich road was much frequented by motor-cars and taxicabs, and he found that the 13th hole of the * * * links ran almost parallel to, and quite close to the high road. Mr. C. did not appear in support of the defense, and for the club it was contended that the accident was entirely due to the wrongful act of Mr. C. in hitting the ball.

"He was satisfied that balls driven from the tee frequently landed on or over the highway. Further, he was satisfied that on some occasions balls had actually struck vehicles passing along the highway, and that the user of the 13th tee was a danger to the public passing along the highway.

"He was sure that the directors of the club knew, or they ought to have known, that balls driven from the 13th tee frequently landed in the road, * * *. On the facts, he was satisfied that the tee and the hole were a public nuisance under the conditions and in the place where they were situated. He was much impressed by the argument that Mr. C. saw, or ought to have seen, the taxicab driven by the plaintiff coming along the highway, and that he was perfectly reckless in the way he drove off.

"He could conceive that there were cases where golf clubs might not be liable for accidents more or less of this character; as, for example, the case where a railway line ran between the hole and the tee, and some foolish member of the club drove off at a time when a long passenger train was passing. He would decide such a case when it arose, but that was not such a case as the one before him. He was satisfied that the slicing of the ball into the road was not only a public danger, but was the probable consequence from time to time of people driving from the tee."

So that was that, and the club was held liable for the negligence of its member

Mr. C., on the grounds of nuisance; in other words, for maintaining a course that was laid out in such a manner as to create a positive danger to members of the public passing certain parts of it. The holding announces good law, and it can hardly be questioned but what the same conclusion would have been reached upon the same facts had the case arose in any American jurisdiction.

Summary.

In the light of the facts and holdings of the cases reviewed, their import may be summarized as follows: A golf club will not ordinarily be liable for injury to a member or others playing the course caused by being struck by a ball. Neither will a club incur liability for such an injury to a trespasser upon its property, but in such cases the injured person would have recourse, if any, only upon the person who drove the ball.

In respect to injury to a caddie or other employe of the club we have a somewhat different situation. If the club was in a jurisdiction covered by a workmen's compensation law, such an injured person would have the option of demanding com-

pensation thereunder from the club, or of bringing an action based on negligence against the person responsible for his injury. But he could not pursue both remedies.

As to injuries to passersby upon a highway, the club's liability would seem to depend upon whether or not its method of maintenance constituted a danger to the public. If it did, as in the English case reviewed, the club might be held liable. But, in the absence of such a showing, the injured person would have recourse only upon the one directly responsible for his injury.

Pros Today Must Protect Players, Manufacturers and Themselves

By THE ROAMER

DURING THE past three months the writer has made contact with many of the golf professionals in Illinois, Wisconsin and Minnesota, and opinions were unanimous and uncomplimentary about certain manufacturers of comparatively recent origin whose policies seem to have been made by the production department, with a view to maintaining schedules, instead of by officials interested in securing a place for their companies in the economic firmament.

In one section, a well known ball was being peddled to business men in their places of business, and players in another section have worked out a "system" of "collective buying" which enables them to obtain golf balls at wholesale prices. In another section a fairly well known make of golf clubs can be purchased at wholesale prices by any one having the price. In some places golf goods of well known makes in the department and cut rate stores are quoted at prices paid by the pro for the same goods. This is undermining the business in a manner that is bound to prove a boomerang and have the opposite effect than the one intended of increasing sales volume.

Some of these manufacturers are apparently out to get the "egg" and "to hell with the goose." They apparently regard the professional as a necessary evil rather than as a mainstay to the game and without whom golf courses would soon fall into disuse for lack of membership interest and development.

It must be apparent to any one capable of thinking that the time will never come when golf skill will be acquired by any