'Parked' car kills golfer

Manufacturer's warranty of fitness of product for intended use extended to bystander by Connecticut court.

By WILLIAM JABINE

An unusual fatal accident on a Connecticut golf course gave a court of that State an opportunity to take a forward step in the development of the law. It concerns a manufacturer's warranty of the fitness of his product for its intended use. This case extends the guaranty in line with a trend of recent years which gives increased protection to the general public.

The Superior Court, New Haven County, which made the ruling, describes the accident as follows: "This is an action for damages arising from injuries which resulted in the death of Burnell R. Mitchell, the decedent of the plaintiff executrix, allegedly caused by the defendants Nancy Backman, her father Horace G. Miller, Wallingford Country Club, Inc., and General Motors Corporation.

"The allegations in the first count are based on the negligence of the defendants Wallingford Country Club, Horace G. Miller and Nancy Backman. In substance, the first count sets forth that the defendant Nancy Backman had parked a car upon the parking area of the defendant Wallingford Country Club, which parking area overlooks the seventeenth fairway of the golf course of said defendant country club.

"The car, a 1962 Buick automobile, had been manufactured by defendant General Motors and was parked on a slope overlooking said fairway and so left there by defendant Backman who was driving the car as a family car of the defendant Horace G. Miller.

"In parking the car, the defendant Backman placed the hydromatic transmission gearshift lever in the area designated 'park' on the indicator and locked all of the doors of the car. Despite the fact that the automatic hydromatic gearshift mechanism was placed in the area marked 'park' on the indicator, the shifts were not locked therein and the transmission was only partially engaged.

"Being parked on an incline, the transmission became disengaged, and the shift lever slipped into the 'neutral' position, thereby allowing the automobile to roll. The car so parked rolled down the incline, striking the plaintiff's decedent, Burnell R. Mitchell, while he was playing golf upon the seventeenth fairway, with such force as to cause injuries from which he died."

The second and third counts of the complaint were directed against General Motors and alleged that the accident was caused by the negligence of General Motors in manufacturing a defective car, and that General Motors through its extensive advertising had warranted to the defendant Miller and to the public generally that the car was safe and fit for its intended use.

To these allegations General Motors filed a demurrer, a pleading which contends that the plaintiff had not alleged a legal cause of action. The demurrer contended that there was no privity of contract between the man who was killed and General Motors. The privity of contract theory, which prevailed for many years, denied the right to sue on an implied warranty of fitness of merchantability to anyone who had no *contractual* relationship with the defendant who was sued. In other words, in the case of a car, the buyer of the car had

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no right to sue the manufacturer. His only recourse was to the dealer from whom he had bought the car. The dealer, of course, could then sue the manufacturer, but the ultimate user of the car was barred from doing so because he had no direct contract with the manufacturer.

In recent years, however, the coverage of this guaranty of fitness of a product for the purpose for which it was intended has been enlarged in many jurisdictions. This has been accomplished in most cases by a sort of legal fiction; the aggrieved parties have been permitted to sue under the laws governing torts (wrongs) rather than under the laws of contract (where the parties have made a specific agreement).

On this point, the Connecticut court says: "In imposing liability upon manufacturers to ultimate consumers in terms of implied warranty even if no privity of contract exists, the courts have used a convenient legal fiction to accomplish this result. Ordinarily, there is no contract in a real sense between a manufacturer and an expected ultimate consumer of his product. As a matter of public policy, the law has imposed on all manufacturers a duty to consumers irrespective of contract or of privity relationship between them. The search for correct principles to delineate manufacturers' responsibility to consumers has found expression in the doctrine of tort and strict liability. The 'strict liability' doctrine is 'surely a more accept-

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able phrase' than breach of implied warranty of suitability for use. (Citation)"

The Court then discusses the question of whether or not the protection of the strict liability doctrine should be extended to persons who are not actual users of the product, as was the case in the matter before it. It referred to cases on both sides of the question and finally concluded: "The trend toward applying the doctrine of strict liability in the case of an injury arising from the manufacture of a product which may be unreasonably dangerous and from which a likelihood of injury arising from its use is reasonably foreseeable is expanding. Foreseeable or reasonable anticipation of injury from the defect is becoming the test. Reliance on representations of notice of injury are no longer absolute conditions precedent. (Citation)

"The attempt to predicate liability on the law of sales or contract is being

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abandoned in an increasing number of jurisdictions. In Piercefield v. Remington Arms Co., supra, the court thrust aside all fictions as to the basis of the manufacturer's liability, and liability was imposed on the basis of a tort committed by the defendant. Issues should not be determined by labels, which serve only to confuse. (Citations)

"A defective automobile manufactured as alleged in the complaint by the defendant General Motors, constitutes a real hazard upon the highway. (Citation) The likelihood of injury from its use exists not merely for the passengers therein but for the pedestrian upon the highway. The public policy which protects the user and the consumer should also protect the innocent bystander.

"In the instant case, an innocent bystander, while playing golf, was killed by a car defectively manufactured, in so far as the allegations of the complaint go, by the defendant automobile corporation. There seems to be no sound

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public policy to bar a trial upon the issues raised in the complaint. Accordingly, the demurrer of the General Motors Corporation to the third count of the indictment is overruled. (Mitchell v. Miller, 214 A.2d 694.)

(Ed. Note: Unless this ruling by Judge Joseph E. Klau is overruled by Connecticut's higher courts, the case will be duly tried. If the plaintiff succeeds in proving that the alleged defects in the car existed at the time the car left the factory, the manufacturer will be held liable for damages—even though the relationship between the victim of the accident and the maker of the car was so remote. Defects caused by ordinary wear and tear, or those caused by improper maintenance would not, of course, render the manufacturer liable.) •

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