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6 Attorney for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 MAXINE HAMMONTREE, et al.,)
12 Plaintiffs,)
13 vs.)
14 THOMAS H. JENNER, et al.,)
15 Defendants.)

NO. NC C 6772 B
SUPPLEMENTAL POINTS AND
AUTHORITIES IN SUPPORT
OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

16 CONCERNING LIABILITY THERE IS NO TRIABLE ISSUE AND THIS
17 SUMMARY JUDGMENT IS THE APPROPRIATE REMEDY.

18 ON a Motion for Summary Judgment the court determines
19 only from the affidavits if in fact a bonafide, triable issue
20 really exists. This can be the case only if the affidavits
21 show that there is some material issue of fact which the jury
22 should have the responsibility to determine. From the
23 affidavits submitted by both parties here, the facts are
24 absolutely clear that the defendant considered that the
25 plaintiff was blameless and that the sole cause of the accident
26 was some act or omission on the part of the defendant. Their
27 only dispute is that the defendants claim the act or omission
28 was non-negligent and thus, the defendant should be neither
29 culpable nor liable. The plaintiff says the fact of the
30 accident itself must result in liability.

31 The plaintiff agrees with the defendant that under prior
32 law at least a triable issue would have been present. However,

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1 the public policy of this state as enunciated in the Vandermark
2 case and its progeny is that it is monstrous to have the person
3 who sets in motion the injury-delivering engine escape responsi-
4 bility to an innocent bystander. The rationale for this
5 sanguine policy was that he who puts the article in commerce
6 has the best opportunity to secure insurance to distribute the
7 risk of its doing harm. It is one small step for man to apply
8 the analogy of Vandermark to the case at bar and say, "he who
9 drives an automobile on the public highway today has the
10 opportunity to insure against harm which that automobile can
11 do even though the driver is non-negligent". And this is so
12 now, even though in former times he might have been able to
13 inflict harm upon the innocent and escape the duty of ameliorating
14 that harm by making financial amends." The old policy relied
15 on by defendants here worked only to the benefit of insurance
16 companies who hardly needed it and left the innocent individual,
17 who had already suffered the personal injury, to suffer a double
18 injury and further insult by being without the possibility of
19 recoupment.

20 For the purposes of this motion we accept the affidavit
21 of the defendant. However, if the very facts as set forth in
22 defendant's affidavit were proved at the time of trial,
23 plaintiff claims she would be entitled to a directed verdict
24 and judgment on the issue of liability. It is wasteful of the
25 court's time and puts the litigant to unnecessary expense to
26 prepare to present witnesses and medical evidence concerning
27 the condition of the defendant. The facts admitted and agreed
28 to in the affidavit should give rise to absolute liability to
29 an innocent person such as the plaintiff herein if this
30 jurisdiction seeks to remain in the "enlightened" column.

31 We agree that this policy would have the effect of
32 placing liability on drivers and their insurance companies for

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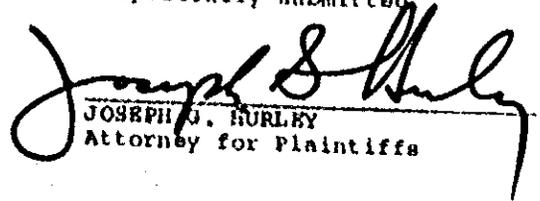
injuries caused by those drivers to citizens of this state.

It is only fair and reasonable that this court should follow the public policy hereinabove referred to and enunciated by the Supreme Court.

The rule must be:

When one claims the privilege of driving a motor vehicle on the public highway, and arising out of the operation of such vehicle the driver causes injury to a totally innocent victim who contributed not at all to the happening of the accident, the driver who could have secured insurance must be held financially responsible for the harm, irrespective of any claim that the accident was the result of a heart attack, seizure or other non-volitional, but causal, act or omission by that driver.

Respectfully submitted,


JOSEPH J. HURLEY
Attorney for Plaintiffs