

100.02 Duty Of Carrier To Protect Passengers From Injury By Third Persons

It was the duty of the defendant to exercise the highest degree of care consistent with the type of vehicle used and the practical operation of its business as a common carrier by [rail, air, etc.] to protect its passengers from the danger of injury from [e.g., stone throwing] of which it knew or should have anticipated from facts and circumstances known to it while the passengers were on its [train, plane, etc.] or while boarding or alighting therefrom. The failure of the defendant to fulfill this duty is negligence.

Notes on Use

This instruction is applicable when the injury is alleged to be the result of the direct conduct of a non-passenger. This instruction shall be used in place of IPI 10.04 to define the duty underlying the issue of negligence when the defendant is a common carrier.

Comment

This instruction, IPI 100.03 (common carrier's duty to protect passengers from assaults by other passengers) and IPI 100.12 (common carrier's duty to protect invitees from assault) have one rule of law in common. In order for any duty of protection to arise, the carrier must have notice of the actual danger, or notice from facts and circumstances known to it that the danger probably exists. *Morris v. Chicago Transit Authority*, 28 Ill.App.3d 183, 328 N.E.2d 208 (1st Dist.1975) (defendant had no notice of rock throwing incidents prior to occurrence); *Blackwell v. Fernandez*, 324 Ill.App. 597, 602-603; 59 N.E.2d 342, 344-345 (1st Dist.1945) (the carrier had notice from the insulting behavior of a drunk that an assault was likely); *Neering v. Illinois Central R. Co.*, 383 Ill. 366, 378-380; 50 N.E.2d 497, 502-503 (1943) (the railroad was liable for an assault on a person waiting on a train platform by one of a group of hobos the railroad knew congregated in the area).

These situations where notice of the danger is required before a duty to protect from it arises must be distinguished from those situations in which the accident was caused by the act of a third person but the carrier was negligent in not guarding against the occurrence. *Elgin, A. & S. Traction Co. v. Wilson*, 217 Ill. 47, 51-52; 75 N.E. 436, 437 (1905) (railroad liable for injuries to passenger when boys threw unlocked and unattended switch); *Chicago, P. & St. L. Ry. Co. v. Lewis*, 145 Ill. 67, 33 N.E. 960 (1893) (an instruction that the carrier was not liable if its tracks were "apparently" in good condition was held erroneous because the carrier had the duty to exercise the highest degree of care to discover the defects).

Amendments to the Metropolitan Transit Authority Act (70 ILCS 3605/27 (1994)), the Regional Transportation Authority Act (70 ILCS 3615/2.08 (1994)), and the Local Mass Transit District Act (70 ILCS 3610/4 (1994)), effective September 24, 1985, have exempted the Chicago Transit Authority and the other entities governed by these acts from liability for the failure to prevent the commission of crimes by fellow passengers or other third parties. *See* Introduction.