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KANSAS SUPREME COURT ADDRESSES A PASSENGER'S LIABILITY TO ANOTHER PASSENGER

Can one passenger be liable to another passenger for her injuries?¹ The Kansas Supreme Court recently answered this question in a case titled *Siruta v. Siruta*, which detailed a family tragedy. Though the facts are horrific, the Court answered that passengers are generally not responsible for the safety of fellow passengers.

A passenger is only liable to another passenger for a driver's negligence where the passenger and the driver operated the vehicle as a common enterprise, or the passenger and the driver had a special relationship. A joint or common enterprise requires four elements: (1) an agreement, (2) a common purpose, (3) a community of interest, and (4) an equal right to a voice, accompanied by an equal right of control over the automobile. If all four elements are present in a relationship between a driver and a passenger, the driver's negligence may then be imputed to the passenger.

The *Sirutas* are the sole heirs at law of their child, who died in the accident. The parents had periodically traded driving duties during an approximate 330 mile-journey. At the time of the crash, the mother was driving, the child was asleep in the back seat, and the child's father was asleep in the front passenger seat. The mother could not recall what caused the accident. The father sued the mother for negligence. The mother's attorney, (undoubtedly prompted by her insurance company), argued that if she was negligent, the father was also responsible for the mother's negligence as a result of their joint-driving decisions. Accordingly, her negligence would be imputed to him and his recovery for the loss of his child would be reduced or completely barred by the mother's negligence.

This theory ran afoul of the fourth prong of the joint-driving doctrine. That element reads: "whether, under the facts and circumstances, there is an *understanding* between the parties that [the passenger] has the right and is possessed of equal authority to prescribe conditions of use

and operation[.]" The Court clarified this element as a "right of control" test: It requires that the driver and the passenger have some advance understanding or agreement that the passenger has a right to tell the driver how to drive. The agreement must extend "equal privilege and right to direct and control [the vehicle's] operations" to both parties.

That is not what the *Sirutas* had. While they may have had a vague understanding that they would divide the time behind the wheel, the Court found that agreement did not amount to an understanding that each party "has the right and is possessed of equal authority to prescribe conditions of use and operation". For example, there was no evidence of an agreement that allowed one to tell the other "how to drive the automobile" or that such orders would be followed. In fact, the mother testified that the father did not make her drive if she did not want to or if she was too tired. The father similarly testified that neither he nor the mother could command the other "to do X, Y or Z". The Court observed that this agreement lacked the degree of control necessary to satisfy the joint-driving doctrine's fourth element. Instead, it was a "mere association of persons riding together in an automobile having a common purpose in making a trip and a common destination". As a result, the driver mother's negligence in this case could not be imputed to the passenger father.

Rarely will a passenger exert enough control over the driver to impute the driver's negligence to that passenger. The driver's liability is not imputed to a passenger who merely takes driving shifts under a casual driving arrangement.

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¹ A passenger can be liable for negligence for injuries to themselves which can reduce damages they may recover from a driver. For example, getting into a vehicle with a known drunk driver. This article addresses liability to fellow passengers and not their duty to use due care for their own safety.