

Henry v Superior Court

2/25/08

Civil Code section 1431.2 (Prop 51); Apportionment among tortfeasors; Subsequent medical malpractice

Plaintiff Reinink was repairing a pool owned by defendants, the Henrys, when he fell over a step, injuring his shoulder. He was transported to Kaiser, where he ultimately underwent a series of surgeries to treat his injury. Plaintiff sued the Henrys and they alleged the affirmative defense of the fault of others contributed to plaintiff's injuries, and their liability for non-economic damages should be allocated in direct proportion to their own percentage of fault.

On the first day of trial, the Henrys filed a statement of the case with the contention plaintiff sustained only a minor injury on their property, which was then aggravated by medical malpractice at Kaiser. Plaintiff objected to defendants' attempt to expand the trial because they had not named Kaiser as a cross-defendant, nor was Kaiser a defendant in the main action. The defendants argued they were entitled to introduce evidence of Kaiser's negligence because their liability for plaintiff's non-economic damages was limited to their proportionate share of fault. The trial court disagreed and excluded the evidence. This writ followed.

The Henrys contend, under civil code section 1431.2, they are entitled to introduce evidence of Kaiser's negligence to limit their liability for non-economic damages to their percentage of fault. In **American Motorcycle v Superior Court** (1978) 20 Cal. 3d 578, the California Supreme Court held that defendants could bring other tortfeasors who were allegedly responsible for the plaintiff's injury into the action through cross-complaints, and any defendant can obtain equitable indemnity on a comparative fault basis from other defendants, thus permitting a fair apportionment of damages among tortfeasors. (**Evangelatos v Superior Court** (1988) 44 Cal. 3d 1188).

A defendant may seek indemnity by filing a cross-complaint in the original tort action or by filing a separate indemnity action after paying more than its proportionate share of the damages through the satisfaction of a judgment or through payment in settlement.

In ***Ash v Mortenson*** (1944) 24 Cal. 2d 654, the Supreme Court concluded where one is injured by a tortious act of another, and through due care, secures medical services and his injuries are aggravated by the negligence of a doctor, the law regards the act of the original wrongdoer as a proximate cause of the damages flowing from the subsequent negligent medical treatment. The important factor in this line of cases is that the medical treatment is closely and reasonably associated with the immediate consequences of the defendant's act and forms a normal part of its aftermath.

Although ***American Motorcycle*** referred to concurrent tortfeasors for purposes of the **doctrine of comparative equitable indemnity**, it does not matter whether the tortfeasors acted in concert to create a single injury, or successively, in creating distinct and divisible injury. The cases hold for purposes of joint and several liability the plaintiff's injuries need only be causally interrelated, not physically inseparable.

The Appellate Justices held here that to the extent Reinink's shoulder injury can be divided by causation into distinct component parts the original injury versus the medical negligence liability for each indivisible component should be considered separately. The Henrys, if negligent, are solely responsible for the initial injury; liability for the enhanced or aggravated injury is properly apportioned between the Henrys and Kaiser in accordance with the rules of comparative fault and section 1431.2. (Prop. 51).

Plaintiff Reinink also argued that since the original tortfeasor has no control over the subsequent medical treatment and has no ability to protect himself from the ensuing medical negligence, his liability is akin to vicarious liability. The Justices noted that the difference here is that the original wrongdoer is not entirely passive and the liability not entirely imputed. The fault of the original tortfeasor can be evaluated, measured and compared. This is the proper case for application of Prop 51 principles.

Finally the Court rejected the argument that since the nature of the property owner's (Henrys) negligence is different than that of the Kaiser physicians, they cannot be compared. A jury may properly consider and evaluate the relative responsibility of various parties for an injury (whether their responsibility for the injury rests on negligence, strict liability or other theories of responsibility) to arrive at an equitable apportionment or

allocation of loss. Whatever class of negligence is involved, under section 1431.2 in personal injury actions in which principles of comparative fault are implicated, the liability of a defendant for non-economic damages is several only.

The writ petition is granted. The Superior Court is ordered to vacate its order excluding evidence of subsequent negligence by Kaiser physicians, and to enter a new order permitting such evidence if it is otherwise admissible.