

7.12 DUTY OF PASSENGER IN AUTOMOBILE (Approved 5/91)

A passenger in an automobile must act with the same amount of care and caution for her/his own safety as an ordinary careful person would exercise under like circumstances. A passenger has the right to assume that the driver will exercise proper care and caution in driving the automobile. Until a passenger knows, or in the exercise of reasonable care should know, that the driver is incapable of operating the automobile or is operating the automobile in a negligent manner, there is no duty for the passenger to supervise the driving, to keep a lookout for danger, or to warn of a danger of which a passenger reasonably believes the driver is aware.

[The following may be added where appropriate:

However, while the passenger ordinarily has no duty to control or direct the driver, there is a point where reliance upon the driver ends and the duty to act begins. Thus, when it should become apparent to a reasonably careful person that the vehicle is being driven negligently, the reasonable passenger must protest or otherwise persuade the driver to drive carefully. Further if such protests are disregarded, there is a duty for the passenger to leave the car when a reasonable opportunity is afforded, if you determine that a reasonably careful person would do so under similar circumstances.]

[Alternative:

While a passenger who has no control over the car is not responsible for the negligence of the operator of an automobile, still the passenger is required to act with such care as is reasonable for her/his own safety within the circumstances of the case.

A passenger in a car, in the absence of any facts or circumstances indicating the contrary, can reasonably anticipate that the driver, who has exclusive control and management of the vehicle, will not proceed in a dangerous situation, or fail to keep the speed of the vehicle within proper limits. A proper passenger need not anticipate that a driver will improperly increase the risks common to travel.]

NOTE TO JUDGE

The above applies where the relationship of master and servant or principal and agent, or mutual responsibility in a common enterprise, does not exist.

Cases:

A passenger is bound to exercise such care for his/her own safety as the exigencies of the situation require. *Melone v. J.C.P. & L. Co.*, 18 *N.J.* 163 (1955); *Ambrose v. Cyphers*, 29 *N.J.* 138, 150-151 (1959); *Falicki v. Camden Co. Bev. Co.*, 131 *N.J.L.* 590 (E. & A. 1944). An invitee is duty bound to warn a driver only of known and appreciated peril if a reasonably prudent person would have given such warning under the same or similar circumstances and the risk could thereby have been averted. *Kaufman v. P.R.R.*, 2 *N.J.* 318, 323 (1949); *Kaufmann v. Huss*, 59 *N.J. Super.* 64 (App. Div. 1960).

A peril can be said to be known and appreciated when the passenger is (1) aware of the danger, and (2) circumstances indicate to the passenger that the driver is unaware of it. *Kaufmann v. Huss*, 59 *N.J. Super.* at p. 76.

It is a question for the jury whether a passenger, by his/her own overindulgence, contributed to his/her injury. *Petrone v. Margolis*, 20 *N.J. Super.* 180 (App. Div. 1952); *Bowman v. C.R.R. of N.J.*, 27 *N.J. Super.* 370 (App. Div. 1953).