

A construction worker was working at the construction site of a new building. An open elevator, which had been installed in the building by the elevator manufacturer, was used to haul workers and building materials between floors. While the worker was riding the elevator, it stalled between floors due to a manufacturing defect in the elevator. The worker called for assistance and was in no danger, but after waiting 15 minutes for help, he became anxious and jumped 12 feet to get out. He severely injured his back when he landed.

In an action by the worker against the elevator manufacturer to recover for his back injury, is the worker likely to obtain a judgment for 100% of his damages?

- A. No, because such risks are inherent in construction work.
- B. No, because the worker was not in danger while on the stalled elevator.
- C. Yes, because the elevator stalled due to a manufacturing defect.
- D. Yes, because the worker was falsely imprisoned in the stalled elevator.

Explanation:

Contributory negligence

(defense to strict products liability)

Traditional contributory negligence jurisdiction	Plaintiff's negligence is no defense (no bar & no reduction in recovery)
Pure comparative negligence jurisdiction*	Plaintiff's negligence reduces recovery by plaintiff's proportionate fault (eg, plaintiff 90% at fault can recover 10% of damages)

*Default rule on MBE

Commercial suppliers are subject to **strict products liability** when their **defective product** caused the plaintiff harm. But if the plaintiff contributed to that harm by failing to use the level of reasonable care that should have been used for his/her own protection (**contributory negligence**), then recovery will be **proportionally reduced** according to the plaintiff's share of fault in a pure comparative negligence jurisdiction (default rule).

Here, the elevator stalled between floors due to a manufacturing defect and caused the worker to jump out of the elevator and injure his back (**Choice C**). But since the stalled elevator did not place the worker in any danger, it was unreasonable for him to jump after waiting only 15 minutes for help (contributory negligence). Therefore, the worker's damages will likely be *reduced* by an amount proportionate to his share of fault.

(Choice A) The risk of an elevator stalling may be inherent in constructing a new building, but it is not a basis for denying or reducing the worker's recovery. Instead, his recovery will be reduced because he created an additional risk not inherent to construction work by jumping out of the elevator when he was in no danger.

(Choice D) False imprisonment requires proof that (1) the defendant **intentionally** confined the plaintiff within a fixed space and (2) the plaintiff was aware of such confinement or harmed by it. Here, there is no evidence that the elevator manufacturer intended to confine the worker, so it is not liable for false imprisonment.

Educational objective:

In a pure comparative negligence jurisdiction, a plaintiff's recovery for strict products liability is reduced in proportion to the plaintiff's contributory negligence (failure to use reasonable care for his/her own protection).

References

Restatement (Third) of Torts: Prods. Liab. §§ 1, 2(a) (Am. Law Inst. 1998) (strict products liability for manufacturing defects).

Restatement (Third) of Torts: Prods. Liab. § 17 (Am. Law Inst. 1998) (apportionment of liability).

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