

A recently installed elevator suddenly started free-falling down the elevator shaft while carrying passengers. Frightened, a passenger pried the inside doors open and impulsively stuck his arm through them to try to stop the fall. As a result, his arm was broken. The elevator eventually stopped without causing further injuries.

In a negligence action brought by the injured passenger against the company that installed and maintained the elevator, the injured passenger has asked the trial judge to instruct the jury that it may find the company negligent on a theory of *res ipsa loquitur*. In response, the company has argued that the passenger's conduct caused his injuries.

How should the judge rule?

- A. The judge should deny the passenger's request, because it is possible that the company was not negligent. (5%)
- B. The judge should deny the passenger's request, because the jury could find that the conduct of the passenger contributed to his injuries. (29%)
- C. The judge should grant the passenger's request but should also instruct the jurors to consider any carelessness of the passenger in awarding damages if they find the company liable. (54%)
- D. The judge should grant the passenger's request, because the passenger acted reasonably considering the stress of the situation. (11%)

Correct

54% Answered correctly

01 min, 22 secs Time Spent

2023 Version

Explanation:

In a negligence action, the doctrine of **res ipsa loquitur** allows the jury to **infer the defendant's negligence** from **circumstantial evidence** when there is no direct evidence of such negligence. This doctrine applies if:

the **accident** was of a kind that **ordinarily does not occur** in the absence of negligence—eg, an elevator going into a free fall

the thing that caused the harm was under the **defendant's exclusive control**—eg, the company that installed and maintained an elevator has exclusive control over it *and*

that harm was **not due to the plaintiff's actions**.

The requirement that the harm not be due to the plaintiff's own actions is applied only loosely by the vast majority of **comparative-fault jurisdictions** (default rule on MBE). In these jurisdictions, any **negligent conduct by the plaintiff** that contributed to his/her harm will **reduce** the amount of **damages awarded** but does **not prohibit recovery**.

Here, although there is no direct evidence that the company was negligent in installing and maintaining the elevator, the jury can infer the company's negligence through *res ipsa loquitur* **(Choice A)**. As a result, the judge should grant the passenger's request to instruct the jury that it may find the company negligent on this theory. But since the passenger may have negligently attempted to stop the elevator with his arm, the judge should also instruct the jurors to consider the passenger's carelessness in awarding damages if they find the company liable.

(Choice B) Any negligent conduct by the passenger that contributed to his injuries will reduce his damages but does not bar a *res ipsa loquitur* jury instruction.

(Choice D) Whether the passenger acted reasonably considering the stress of the situation is relevant to determining damages but not to the judge giving a *res ipsa loquitur* jury instruction.

Educational objective:

The vast majority of comparative-fault jurisdictions only loosely apply the third requirement for *res ipsa loquitur*—that the harm not be due to the plaintiff's own actions. As a result, the plaintiff's negligent conduct will reduce his/her damages but will not prohibit recovery under the doctrine of *res ipsa loquitur*.

References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (defining the doctrine of *res ipsa loquitur*).

57B Am. Jur. 2d Negligence § 887 (2022) (explaining comparative negligence, generally).

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