

A blasting company was conducting blasting operations in connection with a highway-widening project. Prior to setting off a charge, the blasting company supervisor posted a large warning sign and stationed a flagman to stop automobiles along the highway. Although a motorist saw and understood both the sign and the flagman's instruction to stop, the motorist nonetheless continued past the flagman and the sign and was traveling along the highway at the moment of the blast. A flying rock from the blast hit and severely damaged the motorist's car.

The jurisdiction follows the traditional common law rules governing contributory negligence and assumption of risk.

If the motorist pursues a claim against the blasting company to recover for the damage to the car, and all the foregoing facts are established, how much should the motorist recover?

- A. The full value of the car.
- B. The full cost of restoring the car to its condition just before the accident.
- C. The full cost of restoring the car to its condition just before the accident, reduced by the percentage by which the motorist's conduct contributed to the accident.
- D. Nothing.

Incorrect

Correct answer D

Collecting Statistics

57 secsTime Spent

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## Explanation:

### Assumption of the risk

(voluntary exposure to known risk of harm)

#### Traditional *contributory* negligence

Bars plaintiff's recovery

#### Pure *comparative* negligence\*

Majority view: Reduces recovery by plaintiff's proportionate share of fault

Minority view: Bars plaintiff's recovery

\*Default rule on MBE.

Under a theory of **negligence**, the plaintiff can recover damages resulting from any personal injury or property damage. However, in traditional common-law and contributory negligence jurisdictions (as seen here), the plaintiff cannot recover any damages when the **affirmative defense** of **assumption of the risk** applies. This defense applies if the **plaintiff**:

**knew** about the **risk of harm** *and* **voluntarily accepted** that risk.

Here, the blasting company set off a charge along the highway that caused a rock to hit and severely damage the motorist's car. But the motorist *knew* about this risk because the company's supervisor had posted a large warning sign and stationed a flagman to stop automobiles from proceeding along the highway before the blast occurred. Nevertheless, the motorist *voluntarily* accepted that risk when he continued past the flagman and the sign despite seeing and understanding both of them. Therefore, the motorist should recover nothing **(Choices A & B)**.

**(Choice D)** In a majority of pure comparative negligence jurisdictions, assumption of the risk is a defense that can reduce the plaintiff's recovery by his/her proportionate share of the fault. Had the jurisdiction adopted this approach, the motorist could have recovered the full cost of restoring the car to its condition just before the accident, which would then have been reduced by the motorist's percentage of the overall fault.

### Educational objective:

In traditional common-law and contributory negligence jurisdictions, assumption of the risk is a defense to negligence that bars recovery if the plaintiff knew about and voluntarily accepted the risk that caused the plaintiff's harm.

### References

Restatement (Second) of Torts § 496C (Am. Law Inst. 1965) (explaining that a plaintiff cannot recover for negligence when he/she fully understood and voluntarily confronted a risk).

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