A tanker truck filled with a flammable gas properly displayed the warning signs required by the U.S. Department of Transportation. As the truck driver was driving on an interstate highway, he failed to signal when changing lanes as required by a state statute. As a result, an automobile driver traveling in the next lane had to swerve sharply onto the shoulder of the road. Due to debris on the shoulder and the fact that he was speeding, the driver lost control of the automobile. In the resulting accident, the automobile driver suffered serious injuries.

The automobile driver brought a strict liability action against the truck driver to recover personal-injury damages.

In a contributory negligence jurisdiction, is the automobile driver likely to prevail?

- A. No, because the accident was not caused by the transportation of the hazardous chemicals.
- B. No, because the automobile driver's own negligence bars his recovery.
- C. Yes, because the transportation of hazardous chemicals is an abnormally dangerous activity.
- D. Yes, because the truck driver violated a statute by failing to signal when changing lanes.

Explanation:

An **abnormally dangerous activity** is an uncommon activity that creates a foreseeable and highly significant risk of physical harm (ie, bodily injury or property damage) even when reasonable care is used. A defendant can be held **strictly liable** for an abnormally dangerous activity (eg, transporting hazardous chemicals) **if** the plaintiff's **harm results from** the **risk that made the activity abnormally dangerous** in the first place.

Here, the truck driver was transporting a flammable gas (hazardous chemical), which is traditionally considered abnormally dangerous because of the highly significant risk of fire or explosion that it poses.* However, the automobile driver swerved and lost control of his car because the truck driver unexpectedly changed lanes without signaling—a hazard unrelated to the abnormal dangers of transporting hazardous chemicals. Therefore, the automobile driver is unlikely to prevail in his strict liability action (Choice C).

*Some modern courts have found that transportation of hazardous chemicals does not qualify as an abnormally dangerous activity because of its current frequency.

(Choice B) In contributory negligence jurisdictions (including this one), the plaintiff's own negligence is a complete bar to recovery in a negligence action. But it is no defense to strict liability (ie, it does not bar recovery).** Therefore, the fact that the automobile driver's speeding contributed to the accident does not bar his recovery.

**In comparative negligence jurisdictions, courts are divided as to whether the plaintiff's own negligence will reduce the plaintiff's recovery by his/her proportionate share of fault in a strict liability action.

(Choice D) The truck driver did violate a statute by failing to signal when changing lanes. This was negligent per se because the statute was designed to protect persons like the automobile driver from traffic accidents. But proof of negligence is irrelevant to this strict liability action.

Educational objective:

A defendant may be held strictly liable for an abnormally dangerous activity if the plaintiff's harm results from the risk that made the activity abnormally dangerous in the first place.

References

Restatement (Third) of Torts: Liab. for Physical and Emotional Harm § 20 (strict liability for abnormally dangerous activities).

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Strict liability for abnormally dangerous activity





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