Take Care

An Unsafe Old Car May Leave You Liable

The vast majority of car collectors are very careful in the operation of their beloved vehicles without any outside person or entity telling them that they should be. But the law does impose many requirements on motorists generally in terms of how they maintain and operate their cars. A prudent collector should take into account that older cars and their parts may be more likely to fail than newer ones (although I suspect some may take issue with the latter assumption).

A couple of recent cases discussed the obligations of motorists who happened to be operating old vehicles. Although in neither case did the court focus on the age of the vehicles, it is possible that their age played a role in the mechanical failure involved in each. The point is that, for a variety of reasons of which legal implications are just one, vintage car owners may want to "go the extra mile" to be on the safe side.

In *Ashcraft vs. Northeast Sullivan County School Corp.*, decided on March 11, 1999, by the Court of Appeals of Indiana, Gerald Richardson purchased a 1973 Chrysler. According to the Court, three weeks later he parked the car on an incline, such that the rear end of the vehicle was lower than the front end, placed the vehicle in "park," turned it off, and took the keys.

Neither at the time of purchase nor during the intervening weeks had Richardson been told of or experienced any problems with the car's automatic transmission, nor had he experienced any problems or been advised of any problems with the car's braking mechanism.

Approximately 5-10 minutes later, Richardson learned that his vehicle had rolled backwards out of the spot and struck Heather A. Ashcraft. When police officers checked the car after the accident, the transmission selector was in "park."

Ashcraft sued Richardson for negligence; she also named other entities as defendants, including her insurer, Town & County Mutual Insurance Company. Ashcraft sought to recover under the underinsured motorist provision of her insurance policy. Richardson and Ashcraft settled. After a hearing, the Sullivan Circuit Court granted the remaining defendants' motions for summary judgment. Ashcraft appealed.

The Court of Appeals reversed the ruling for Town & Country, and remanded the case (sent it back to the lower court) for trial. It began by observing: "Whether Town & Country can be held liable for Ashcraft's injury depends upon whether Richardson, as an underinsured motorist, was negligent."

"[A]bsent the finding of a duty, there can be no breach, and thus no recovery under the theory of negligence...Arguing that Richardson, as the operator of a motor vehicle, owed a general, common law duty 'to all foreseeable victims that may be harmed by the operation of his vehicle,' Ashcraft points to Ind. Code 9-19-3-1, which provides that all motor vehicles (other than motorcycles) must be equipped with two separate brake mechanisms, 'so that failure of one (1) part of the operating mechanism does not leave the motor vehicle without brakes on at least two wheels.' Her argument is that although Richardson was in compliance with the statute insofar as his car had an emergency hand brake, there is a fact question as to whether his opting not to set the hand brake in this instance constituted a breach of his general duty of care. Town & Country argues that Indiana does not recognize a driver's duty to set his emergency brake each time he parks his vehicle, and that we should not establish such a duty as a matter of law."

"As noted above, the existence of a duty is a question of law for the court to determine...We do not need to reach the question of whether Ind. Code 9-19-3-1 'creates' a specific duty as relates to parking one's vehicle, although we are doubtful that it does; nor are we, as Town & Country cautions against, establishing that a driver owes a duty to set his emergency brake each time he parks his vehicle. We simply hold a driver parking on an incline does owe a duty to park safely, i.e., to take whatever measures a reasonably prudent person would take to ensure that the car, once parked and left unattended, does not roll down that incline. The remaining questions in this case—whether Richardson breached that duty, and if so, whether that breach proximately caused Ashcraft's injury—are best resolved by a trier of fact...Accordingly, we remand Ashcraft's action against Town & Country for further proceedings to determine whether Richardson was negligent in parking his vehicle on an incline without setting his emergency hand brake."

Next month, we will examine a case from Louisiana presenting a somewhat similar situation and issue.

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior Old Cars In Law *articles can be found on-line at www.lawrence savell.com*