Legal Duty of a Bus Operator to Safely Drop Off Passengers

Under New York law and laws in every state in the U.S., paratransit professionals are obligated to exercise reasonable care in the transport of passengers, including when letting them off city buses. Because they are professionals, specially trained and required to put passenger safety first and foremost, New York courts have held that a bus operator’s duty of care to a disembarking is to exercise due care under all the attendant circumstances. That duty of care depends upon the particular circumstances in each case, the location, the time, the age or disability of the passenger, weather and traffic conditions, and any other circumstance that the bus operator is aware of or should be aware of when letting a passenger of his or her bus. In other words, bus operators hold the passengers’ safety literally in their hands and they are obligated to exercise reasonable and commensurate **care *in view of the dangers to be apprehended (all the circumstances that the bus operator should be aware of in a particular case****).* *Blye v. Manhattan and Bronx Surface Transit Operating Authority*, 124 A.D.2d 106, 511 N.Y.S.2d 612 (1st Dept., 1987) *and Rodriquez v. Manhattan and Bronx Surface Transit Operating Authority,* 117 A.D.2d 541, 498 N.Y.S.2d 826 (1st Dept., 1986)

The bus operator’s duty of care extends to not just the precise point of entry or exit from the bus, but the bus operator is charged with exercising reasonable care sufficient to allow the passenger to safely disembark ***and leave the area*.** If the bus operator is aware of certain surrounding circumstances in the known or intended path to leave the area and point of exit from the bus, the bus operator is charged with the exercise of reasonable care regarding the path he or she knows the passenger will follow in leaving the area. *Miller v. Fernan*, 537 N.Y.S.2d 123, 73 N.Y.2d 844 (Court of Appeals, 1988); *Conetta v. New York City Transit Authority*, 307 A.D.2d 333, 762 N.Y.S.2d 634 (2nd Dept., 2003)

New York courts have held that the common carrier and bus operator, in discharging passengers, must provide a reasonably safe point from which passengers can ***descend from the bus and walk away without incurring a risk of injury.*** It is the bus operator’s responsibility to stop the bus at a safe location, all attendant circumstances considered, including the readily observable condition and nature of the passengers, who are disembarking from the bus. *Blye*, supra and *Gross v. New York City Transit Authority,* 256 A.D.2d 128, 681 N.Y.S.2d 513 (1st Dept., 1998)

Pursuant to these principles, it is now well settled that bus operator breaches the duty if the operator (1) did anything to compel or suggest that the passenger take a dangerous path away from the bus; (2) is aware of or could ***reasonably foresee*** that the particular passenger might suffer some accident or injury from departing from the area where the bus operator let the passenger off from the bus; and, (3) the bus operator is charged with knowing or being aware of all those circumstances that he or she should be aware of with the normal use of the bus operator’s senses and faculties.

As the court in *Malawer v. New York City Transit Authority*, 18 A.D.3d 293, 795 N.Y.S.2d 201 (1st Dept., May 17, 2005) held, the mere fact that the passenger was unaware of a dangerous condition existing after alighting from the bus did not mean that the bus operator would not himself been aware of that dangerous condition that caused the passenger to be injured when leaving the area. The *Malawer* Court applied established law to the facts and held that the fact plaintiff failed to see or apprehend the hazard did not conclusively negate an inference that the driver could or should have been aware of the hazard.

In *Archer v. New York Transit Authority*, 806 N.Y.S.2d 582, 2006 N.Y. Slip Op. 00091 (1st Dept., January 5, 2006) the Appellate Division, First Department unanimously reversed an Order of the Supreme Court, New York County that granted defendants’ motion for summary judgment. The bus passenger sustained injuries when he fell on a defect that the bus operator claimed he was unaware of. Even though the Transit Authority argued that the bus operator was not aware of the defect (no notice), the court held that it was up to the jury to decide whether the operator was negligent. In the Archer case, the bus operator let the passenger out in advance of a designated bus stop. The Archer Court held that even though the passenger was himself not aware of the danger and hazard that caused him to be injured, that did not “negate the inference that the bus driver could have been aware of the hazard; therefore, issues of fact existed that precluded the award of summary judgment on behalf of the defendants.”

In *Gross*, supra, First Department unanimously reversed an Order of the Supreme Court, New York County which granted defendants’ motion for summary judgment dismissing the bus passenger’s complaint. The passenger was hurt when she was struck by a bicycle after stepping onto the street. The Transit Authority argued that once the passenger was safely let off the bus, the bus operator had no further duty to prevent any potential injury to that passenger. The *Gross* Court explained that it was for a jury to decide “whether requiring prospective passengers to navigate a full traffic lane, in order to board the bus presented a foreseeable risk of injury.” The Court reasoned that “whether the path afforded to plaintiff, under the circumstances presented in this matter, was reasonably safe was a question for the jury and was certainly not resolved by the record before the Court.” Even when a third party also causes injury to the passenger, the bus operator is still required to exercise reasonable care (as a professional transporting people) and it is a fact question in every case whether that care exercised was reasonable or not. Given the distance that the passenger had to walk to get to where she was going, it was reasonably foreseeable that she could be injured en route.

In *Gross,* the Transit Authority also tried to argue that the passenger’s own behavior constituted an intervening cause, since it was, she (an adult) who chose to follow the path she took in the road as she walked away from the bus. The *Gross* Court disagreed with the Transit Authority and held that the Transit Authority failed to provide any evidence that the passenger’s failure to take certain precautions was an extraordinary and unforeseeable act of recklessness under those circumstances.

Every case is different, driven by its particular facts and circumstances. Life is not a series of boxes and clear lines. People and bus passengers come in all shapes, sizes, ages and abilities, and bus operators, as professionals are obligated to take those facts and circumstances into account. ages and foresee the risks attendant to each circumstance. Not too many jobs in the city are “easy” and operating a bus can certainly be challenging. However, transporting people, including elderly, disabled, deaf, blind, wheelchair bound and child passengers, requires professional training and judgement. Bus operators are required to exercise reasonable care under all circumstances in a particular case, not to rush to maintain schedule and put safety second. Safety and due care are the first priority!