Smith v Tucker (2008):

On September 11th, 2003, Michele Tucker, the defendant, was driving her children to school. She heard the tone indicating her vehicle was low in fuel. Mrs. Tucker believed that she would still have enough fuel to drop her children at school before going to the gas station. However, just after she had dropped them off, her vehicle stalled. Mrs. Tucker put on her hazard lights and attempted to steer her truck to the side of the road out of the way of traffic. The plaintiff, who was driving a taxi, and was acquainted with Mrs. Tucker, saw that her vehicle was causing a hazard and stopped to help. He helped Mrs. Tucker push the vehicle out of traffic. In the course of pushing the car, the plaintiff fell and severely injured a tendon. He has been left with a permanent partial disability. He sued the defendant arguing that by failing to heed her gas gauge warning tone, she was negligent. He sought damages on the basis that she was liable to him, arguing that a person who is negligent is not only liable for direct victims but to those who attempt to rescue those victims.

The defendant argued that in cases involving rescuers, the wrongdoer is required to have created a situation of imminent peril. There was no indication of imminent peril in this situation; no one had been injured or was panicked. The plaintiff voluntarily assumed the risk by stopping to help.

The Court found that the defendant was negligent in permitting the vehicle to run out of fuel and stall while driving in traffic. Nevertheless, the Judge concluded that the plaintiff could not recover damages for his personal injuries on the basis that he was a rescuer because there was no danger in the defendant’s circumstances.

Analysis Questions:

1. How does the issue of duty of care apply to this case?
2. What factors would you consider in deciding liability in this case?