IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO: 391 OF 1995

BETWEEN:

EARDLEY MARTIN

AND

WAYNE HAZEL

RUDOLPH MC TAIRE

Miss Nicole Sylvester for the plaintiff

Mr Ronald Jack for the first-named defendant

Second-named defendant Rudolph Mc Taire in person

[27th and 30th April 1998]

[Delivered on 19th May 1998]

JUDGMENT

ADAMS J.

By a Writ and Statement of Claim filed on October 9, 1995 the plaintiff sued the first and second named defendants alleging that on the 22nd of June 1995, the latter drove motor vehicle R 2000 in a manner that amounted to negligence. It was further alleged that while the second-named defendant was doing so he was then serving in the capacity as the servant or agent of the first-named defendant thereby making them jointly liable.

The plaintiff by an amended Statement of Claim to which no objection was taken asked for special damages in the sum of $4050.00 for loss of use of his vehicle for 27 days from the 22nd June 1995 to the 18th July 1995 at a rate of $150.00 per day, because of the damage resulting to it from the second defendant's driving. He has asked also for special damages and costs.

In relation to the second named defendant (hereinafter referred to as "Mc Taire") an order for assessment of damages was made against him on the 4th July 1996 he having failed to enter an appearance or file a defence. Through some inadvertence this had not been disclosed to the Court and

when Mc Taire was absent on the morning the trial began, court was adjourned in order to ensure his attendance on the 30th April, there being doubt as to whether he knew the matter was on. It was when he appeared on the 30th and had begun to take part in the proceedings as defendant it was eventually brought to the attention of the Court by Counsel for the plaintiff that judgment had already been entered against him.

Mc Taire was invited by me after this disclosure, to testify and did so having then been cross examined by both counsel. The evidence on record reveals that his evidence was favourable to the first named defendant's case.

In relation to the evidence - I found as a fact that Mc Taire on the day in question did drive negligently and that the damage to the motor vehicle of the plaintiff was as a result of the negligent driving of Mc Taire. The plaintiff's evidence as to loss of use was not challenged nor indeed was the cost of repairs to the vehicle. The two sums of money claimed, that is for loss of use and repairs to the plaintiff's vehicle, must be paid as damages by whomsoever is adjudged to be liable.

In this case because of the judgment already entered against Mc Taire, it becomes necessary only to ascertain whether the first named defendant is jointly liable with him.

There is no contention about the fact that the defendant Hazel was on the day in question the owner of the vehicle. The circumstances under which Mc Taire acquired possession for the purpose of driving were seriously contested. Both of the defendants testified to the fact that Mc Taire rented the car for his own purpose. Miss Sylvester for the plaintiff argued that the document purporting to be evidence of that rental was a fabrication conveniently prepared by the plaintiff for the hearing of this case. While I accept that the first-named defendant was in the business of renting cars, there are circumstances which left me with considerable doubt as to what I would call the "integrity" of the document evidencing the rental agreement.

The document was not referred to as part of the defence of the first-named defendant Hazel at the time the defence was filed. It was never among the documents listed as being in possession of the defendant. Significantly, the driver Mc Taire spoke of leaving $100.00 as a deposit for the car with the first named defendant. No indication on the document of purported rental of any money being paid is to be found. As I have said Mc

Taire at first described the hundred dollars as a deposit but later said it was the "rental fee for the day".

I was not prepared to accept the document nor the evidence of the two defendants about it and I have concluded that there was no rental agreement.

What was the relationship which existed in law between the owner of the car, that is the first defendant, and Mc Taire the second defendant so far as the use of that car was concerned?

Having regard to the very scant evidence led before me in this regard and having rejected the theory of a rental agreement between the two, I am only prepared to draw the inference that Mc Taire drove the vehicle on the day in question as someone acquainted with the first named defendant and for his, that is Mc Taire's own purpose, expressed as being the search for a spare part for a vehicle belonging to Mc Taire's grandmother.

The law to be applied in this background of facts depends on the answer to this question. Was the defendant Mc Taire when he drove the vehicle belonging to the first-named defendant doing so in the capacity of servant or agent of that defendant?

The learning on this aspect of the law of negligence was very expansively provided by five law lords who gave their unanimous decision in the case of ***Morgans v Launchbury and others 1972 - 2AER p. 606*** a case cited by Mr Jack during the hearing of this matter.

In giving his judgment Lord Wilberforce put the guiding principle in this way.

> "For I regard it as clear that in order to fix vicarious liability on the owner of a car in such a case as the present it must be shown that the driver was using it for the owner's purposes, under delegation of a task or duty. The substitution for this clear conception of a vague text based on interest or concern in has nothing in reason or authority to commend it. Everyone who gives permission for the use of his chattel may be said to have an interest or concern in its being carefully used and in most cases if its a car, to have an interest or concern in the safety of the driver, but it has never been held that mere permission is enough to establish vicarious liability."

Viscount Dilhoune in the course of his judgment said:

"It is not and in my opinion has never been the law of this country that the owner of a chattel is responsible in law for damage done by the negligence of a person to whom he has lent it or whom he has permitted to use it. If all that had to be shown to establish liability on the part of the owner of a vehicle was that he had permitted its use by the person who was negligent then ***Hewitt v Bonvin*** was wrongly decided. There the son was permitted to use the car and it was held that the father was not responsible for the sons negligent driving as his son was not his servant or agent at the time".

This is how the law was explained by Lord Pearson at the very outset of his judgment:

"My Lords in my opinion the principle by virtue of which the owner of a car may be held vicariously liable for the negligent driving of the car by another person is the principle "qui facit per alium, facit per se". If the car is being driven by a servant or agent in the course of the employment or by an agent of the owner in the course of the agency, the owner is responsible for negligence in the driving. The making of the journey is a delegated duty or task undertaken by the servant or agent in pursuance of an order or instruction or request from the owner and for the purposes of the owner. For the creation of the agency's relationship it is not necessary that there should be a legally binding contract of agency but it is necessary that there should be an instruction or request from the owner and an undertaking of the duty or task by the agent ..... I think there has to be an acceptance by the agent of a mandate from the principal though neither the acceptance nor the mandate has to be formally expressed or legally binding."

Lord Cross of Chelsea explained his understanding of the law in these words -

"Before this case the law as to vicarious liability of the owner of a chattel for damage caused by its use by another person was I think well settled. The owner of the chattel will be liable if the user of it was using it as his servant or agent. [***Hewitt v Bonvin***]

It is important to note that the views expressed in ***Morgan v Launchbury*** were followed by the Privy Council in ***Rambarran v Gurrucharran 1970 1AER 749***.

In this case before me I have been unable from the evidence to draw an inference which points on the balance of the probabilities to a conclusion that the second defendant Mc Taire was driving the vehicle in such circumstances as to bring its owner within the area of legal liability.

In the premises therefore the claim by the plaintiff against the first-named defendant Wayne Hazel fails and must be dismissed with costs.

10

.....
ODEL ADAMS
High Court Judge

20

30