ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV 483 / 2001

BETWEEN:

O'CARROL BAYNES

Claimant

and

1. WESLEY WILLIAMS
2. KEITH CRUICKSHANK

Defendant

Appearances:

Mr. Samuel Commissiong for the claimant
Mr. Joseph Delves for the defendant

2002:December 9, 18.

JUDGMENT

ALLEYNE J.

[1] The claimant claimed against both defendants damages for negligence resulting from a motor vehicle accident which occurred between a motor vehicle owned and driven by himself and another, registration number PC944 of which the first named defendant is the registered owner and the second named defendant was at the relevant time the driver. The first named defendant has filed a defence, to which the claimant filed a reply. The second named defendant, who was served with the claim form, has not filed an acknowledgement of service or a defence. The claimant proceeded, on the question of liability, against the first named defendant.

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[2] It is not disputed that the first named defendant is the person registered as the owner of PC944, or that the vehicle was being driven by the second named defendant. As between the claimant and the first named defendant, the question of negligence in the manner in which the second named defendant drove the vehicle was not put in issue. What the first named defendant put in issue was the claimant's allegation, made in the statement of claim, that the second named defendant, in driving the vehicle, did so as the servant and/or agent of the first named defendant.

[3] The first named defendant pleaded, and sought by evidence to prove, that while he was the registered owner of the vehicle, the beneficial ownership was in one Ted Lorraine, his friend, that at the relevant time he had handed the vehicle over to Lorraine, and that Lorraine had rented it to the second named defendant. The evidence in support of this contention is the evidence of the first named defendant himself. Against this learned counsel for the claimant draws attention to the fact that the first named defendant said in evidence that Lorraine, who was in St. Vincent at the relevant time, used another car not belonging to him, while he allegedly rented his car to his friend the second named defendant. Learned counsel says that this raises serious questions about the credibility of the first named defendant on that issue. I do not agree, as Lorraine may have had the opportunity to obtain the use of another vehicle at no cost, and earn some money from renting his own vehicle to his friend. Be that as it may, I find it unnecessary to decide that issue of fact, save to say that the claimant has failed to prove on the balance of probability that in driving the vehicle the second named defendant was acting as servant or agent of the first named defendant.

[4] Learned counsel for the claimant concedes that there is no evidence in support of the claim of agency, or of the relationship of master and servant, as between the first and second-named defendants. He submitted, however, that the very fact of ownership in the first named defendant raises a presumption that the first named defendant is liable for the negligence of the second named defendant. He relies

for support of this proposition the statement of Denning, L.J. in **Ormrod and Another v Crossville Motor Services Ltd. and Another** [1953] 2 All E.R. 753 at page 755 that "The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest." With respect, neither these words by themselves, nor in context, nor the case as a whole, supports learned counsel's proposition.

[5] Immediately prefacing the words quoted by counsel are these words;

> "The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver."

It is only following this statement that Lord Denning made the pronouncement on which learned counsel for the claimant relies. Clearly, His Lordship was making the distinction between a driver who was acting wholly or partly in the interests of the owner, on the one hand, and a driver whose acts were wholly unconnected with the interests of the owner on the other hand. The owner's interest, to render him liable, must be not in the property, i.e. the vehicle, but in the *purpose* for which it was being used, contrary to what learned counsel so strenuously argued.

[6] Learned counsel for the claimant also placed reliance on the judgment of Mitchell J. in this court in Civil Suit No. 383 of 1992, delivered on January 24, 2000. Mitchell J., after reviewing the evidence, had this to say at paragraph 8 of his judgment, the last substantive paragraph of the judgment:

> "Whatever the 2nd defendant's motive for registering the vehicle and insuring it in her name as owner, she made herself liable in law as the owner of the vehicle for any negligent damage committed by the person employed to drive the vehicle."

[7] With respect, it seems to me that Mitchell J. was speaking in the context of the particular facts of that case, which he recited in that very paragraph, of the first defendant, the driver of the vehicle, driving in the capacity of *employee*, and by virtue of which the learned judge could only have found that the first defendant

was acting in the place of her brother as owner of the vehicle or at any rate as principal of her son who was employed, under her charge, to drive the vehicle. I do not think that the learned judge intended to say, or said, what learned counsel says he intended, and if he did, then I must respectfully disagree with him.

[8] Learned counsel for the first defendant, on the other hand, while conceding that registration as owner does raise a presumption that the driver was acting as agent or servant, that presumption can be easily rebutted. Learned counsel referred the court to **Commonwealth Caribbean Tort Law** by Gilbert Kodilinye at pages 439 ff. Counsel contended that this presumption is easily rebutted, and referred to the cases of **Hewitt v Bonvin** [1940] 1 K.B. 188**, Morgans v Launchbury,** [1972] 2 All E.R. 606, **and Rambarran v Gurrucharan** [1970] 1 All E.R. 749.

[9] In **Hewitt v Bonvin** MacKinnon L.J. at page 191 had this to say;

> "before any question as to the right of control and direction over the tortfeasor arises at all, it must be established that in doing the act complained of he was employed by the third party to do work for him. This cannot be established by mere proof that the tortfeasor is using a chattel, or driving a vehicle, which is the property of a third party, though that may, in the absence of any explanation, be some evidence of the proposition."

[10] Addressing the very question which arises in this case as raised by learned counsel for the claimant, that is to say, whether the fact that the owner of the car expects to receive a profit from the rental gives him sufficient interest in the renter's purpose as to make him liable vicariously for the acts of the renter, Justice Zacca, acting President of the Court of Appeal of Jamaica, in **Avis Rent-a-Car Ltd. v Maitland** [1980] 32 W.I.R. 294 at 296 had this to say;

> "The fact that the appellant may make a profit whilst the car was being driven by the second defendant does not mean that the second defendant was driving the car for the owner's purposes in pursuance of a task or duty delegated by the company to him."

[11] The learned acting President considered **Morgans v Launchbury** [1973] AC 127 (H.L.) and quoted the section of Lord Denning M.R.'s judgment in the same case in the Court of Appeal where Lord Denning referred to his dictum in **Ormrod.** He continued;

> "When a company or an individual in the course of its business hires a motor vehicle to a person on terms that during the period of hire the vehicle should be driven by the servant or agent of the owner, responsibility for the negligent driving of that motor vehicle will in ordinary circumstances devolve upon the owner. … An entirely different situation arises in law when such a company or individual hires the motor vehicle on condition that the motor vehicle can be driven *by the hirer* for purposes *exclusively determined by the hirer*, in which the *benefits of the venture accrue wholly to the hirer.* In this second case there is no joint interest between the owner and hirer in the outcome of the venture and the hire is not dependent upon or affected by the profitability or otherwise of the venture."

[12] Learned counsel for the claimant expressed in strong terms the legitimate concern relating to the interests of the victims of the negligent conduct of visitors to the country who may hire a motor vehicle, cause loss or injury to a person, and leave the country without settling a claim. President Zacca addressed this concern appropriately in the following terms, at page 298 of the report ([1980] 32 WIR);

> "We are of the opinion that legislation is urgently necessary to protect members of the public who may suffer personal injury and damage due to the negligence of drivers of "U-Drive" cars. The legislature has the provisions of the Motor-Vehicles Insurance (Third Party Risks) Law which can act as a guide for future legislation."

I respectfully entirely agree with and adopt His Lordship's view.

[13] In the circumstances, the claim against the first named defendant is dismissed and judgment is entered for the first named defendant, with costs to be agreed or assessed.

[14] The claimant may proceed against the second named defendant as he may be advised to do.

[15] I thank both learned counsel for their considerable assistance to the court in this matter.

Brian G.K. Alleyne
High Court Judge

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