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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. 2002/W-174

BETWEEN	WILLIAM WILSON	CLAIMANT
A N D	COLLINS JONES	1ST DEFENDANT
A N D	ANDRENE WATSON	2ND DEFENDANT
A N D	RICHARD DUHANEY	3RD DEFENDANT

Mrs. Ingrid Lee Clarke-Bennett & Ms. Avrine Bernard instructed by Pollard, Lee Clarke and Associates for the claimant.

Ms. Audrey Reynolds of Patrick Bailey & Co. for the defendants.

Application for Summary Judgment – Road Traffic Act – Owner – Registered owner – Presumed Owner – Vicarious Liability

Heard: 11th March 2008 and 26th May 2009

Campbell, J.

Background

(1) On the 31st December 2002, the claimant filed a Writ of Summons and Statement of Claim to recover damages for negligence in respect of an accident that took place on the 10th February 2000 whilst he was a passenger in a public passenger vehicle which was being driven and controlled by the first defendant. The claimant, who was 23 years old at the time of the accident, alleged that he was re-embarking the vehicle when he was hit off the step. The police report stated that the bus drove off suddenly and swerved to the right to overtake another bus, dislodging the claimant when he was brought into contact with the other bus.

(2) As a result, the claimant was hospitalized for seven days, suffered a protrusion of the ball through a laceration in the scrotal skin, and fracture of the left pelvic. His left leg is now longer than the right, causing him to walk with a limp. The injury to his pelvic area has resulted in a 30% impairment of the joint. The driver of the vehicle in which the claimant was travelling did not report the incident.

(3) In the Writ, the claimant has named the driver of the vehicle as the first defendant; the owners of the vehicle were named as the 2nd and 3rd defendants. The owners so named have brought this application seeking summary judgment against the claimant, pursuant to CPR 15.2 (a) and costs. The prosecution of the case for the claimant, Mr. William Wilson, who has been described as being impecunious, has taken several interesting diversions.

(4) The claimant's action was deemed to have been automatically struck-out. The claimant's attorneys had experienced difficulty in serving the defendants. The 1st defendant was said to be abroad. The address contained in the police report and the insurance company records in respect of the 2nd and 3rd defendants, although being one and the same, could not be located, because it did not exist. On the 15th April 2004 Master Lindo (Ag.) ordered substituted service. Shortly after the publication an appearance was entered and a defence filed on behalf of the 2nd and 3rd defendants. On the 7th November 2006, Master Lindo (Ag.), after hearing full submissions from counsel, ordered the claimant's case restored and awarded costs to the 2nd and 3rd defendants, who had vigorously resisted the application.

(5) At Case Management on the 15th January 2007, Judgment in Default of Acknowledgment of Service was entered against the driver, and the matter was adjourned for assessment of damages. The 2nd and 3rd defendants joined the 1st defendant as an ancillary defendant seeking indemnification against the driver for any sums that may be awarded against them.

The 2nd & 3rd Defendants' Case

(6) On the 11th July 2007, the 2nd and 3rd defendants/ancillary claimants filed this application for summary judgment. The application was supported by affidavits by the 2nd defendant, which stated in part:

4. "Sometime in or about August 1999, the third defendant and I decided to sell the said vehicle, and while I was in the United Kingdom, the third defendant advised me that he had received an offer of $300,000.00 from the first defendant and we decided to sell the bus to him."

5. The second defendant advised me, and I verily believe that the first defendant made the first payment of $200,000.00 on the 26th August 1999.

6. As the first defendant was well known by the third defendant, we decided to deliver the bus to him, on receipt of this payment, with the understanding that he would pay the balance of $100,000.00 within two months. Exhibited hereto marked 'AW-1' is a copy of this receipt.

7. After I returned from the United Kingdom, the first defendant made the final payment of $100,000.00 to me, on the 12th October 1999, at which time I gave him a receipt which is now exhibited hereto marked 'AW-2'

(7) The 2nd and 3rd defendants defence similarly stated:

2: These defendants deny paragraphs 3 of the Amended Statement of Claim and say the vehicle, though formerly owned by the 2nd & 3rd defendants...., was sold to the 1st defendant on or around August 26th 1999 and paid for in full by the 1st defendant on or around October 12th 1999.

3: Upon the sale of the vehicle as aforesaid, the vehicle was delivered to the 1st defendant who immediately took possession thereof and assumed the full custody and control of the vehicle and these defendants prior interest in the driving and operation of the vehicle ceased immediately thereupon.

(8) It was submitted on behalf of the 2nd & 3rd defendants that the documents "clearly and definitely show" that the vehicle had been purchased by the Transport Authority and that although the record of the Transport Authority shows the vehicle registered in the names of the 2nd and 3rd defendants, it was the 1st defendant who signed the documents. That the 1st defendant was not the servant and/or agent of the 2nd and 3rd defendants. It would be a grave injustice to place liability on the applicants when, at the time of the accident, it had been sold to the Transport Authority. The law applicable in the circumstances can be found in Section 18 (1) (2) of the Sale of Goods Act and Section 21. That the property in the motor vehicle was transferred from the applicants to the 1st defendant in August 1999, some six (6) months before the alleged accident on the 10th February 2000.

(9) In support of the application for summary judgment, an affidavit of Audre Lois Reynolds, Attorney-at-law, dated 14th February 2008, which exhibited a cheque made payable to Collins Jones dated the 28th March 2000. Also exhibited, a list of names, including the name of the 2nd defendant, with a line drawn through it and c/o Colin Jones appears. There is also a standard list certifying that certain vehicles have been checked; this carries the names of the 2nd and 3rd defendants as owners of the bus. The Registration Certificate and the Certificate of Fitness bear the name of the 2nd and 3rd defendants as owners of the vehicle. The Release and Discharge dated 28th March 2000, in the sum of $320,000.00 has the owners as the 2nd and 3rd defendants, although the person signing appears to be C. Jones. There is also a letter dated 12th February 2008 on the official letterhead of the Inland Revenue Department, over the signature of the Principal Collector of Taxes, Kingston, which shows the registered owners as being the 2nd and 3rd defendants.

(10) The claimant relied on affidavit of Ingrid Lee Clarke-Bennett in response to the 2nd defendant's affidavit, which says at paragraph 6;

> That up to July 2007 the vehicle which is the subject of this application was registered in the names of Andrene Watson and Richard Duhaney as the owner.
>
> That having allegedly sold the vehicle from 1999 it seems rather peculiar that the vehicle is still noted at the Central Motor Vehicle Registry as being owned by Ms. Watson and Mr. Duhaney.

Exhibited to the affidavit is a certificate dated 4th July 2007 from the Cross Roads Collectorate that the plates were assigned to the 2nd and 3rd defendants. There was, from the Central Motor Vehicle Registry, a certificate dated 27th December 2000 that names the 2nd defendant as the owner.

(11) The claimant submitted that the vehicle was a Public Passenger Vehicle which, according to the applicants, had been sold but not transferred. The statement contained in the police report about new owner is of no consequence. A claim should only be stuck out if there is no likelihood that the claim can succeed. The cheque does not indicate anything to do with the subject bus. The defendants have not satisfied the requirements of CPR 15.2(a)

Analysis

(12) The 2nd and 3rd defendants' denial of liability is two fold. Firstly, they contend that they are not the owners of the vehicle. Secondly, it follows from that fact, they would not have the requisite control of the vehicle and the 1st defendant was not their servant and/or agent. There is a dearth of evidence as to the terms of the sale of the motor vehicle. Ownership of the vehicle is determined by the Road Traffic Act, and the Regulations made thereunder which regulate road traffic in the island of Jamaica. This regulation extends to both private and public passenger vehicles. Section 2 of the Road Traffic Act, defines owner, as follows;

> "'Owner' means the person for the time being in whose name any motor vehicle or trailer is registered."

Stones Justice Manual, in the treatment of the Road Traffic Act 1969 (UK), notes that 'owner' there was defined as follows;

> "'Owner', in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, the person in possession of the vehicle under that agreement."

It is interesting to note that the said UK Act makes both parties 'owners' for the purposes of making certain reports. Both parties should give information for verifying compliance with requirement of compulsory insurance or security. I must note the lack of information from the 1st defendant in this regard.

(13) The owner of the vehicle, which it is alleged was driven negligently, cannot be liable unless the driver was his servant and/or agent. It seems to me that the identification of the registered owner raises a presumption that the person so named is the person with custody and control of the motor vehicle.

This is a rebuttable presumption. Once raised, it shifts the evidential burden to the registered owner, who may adduce evidence to discharge that burden. If, as is the case here, the vehicle was registered as a PPV vehicle, then, presumably, its road licence being not transferable, evidence might be forthcoming to show that a later licence was issued in the name of the new owner, or that the vendors assigned plates have been removed from the vehicle or that the vendors insurable interest in the vehicle has been terminated. The receipts from the sale of the vehicle would be

some of the ways, amongst others, that would be open to a registered owner to demonstrate that despite his name being on the register as owner, ownership and the control has passed. A party who seeks to show the registered owner as the true owner may, in addition to the fact of registration, point to other facts which are consistent with ownership.

(14) In Rambarran v Gurrucharan (1970) 15 WIR 212, Lord Donovan, sitting in the Privy Council, in an appeal from Guyana, quoted with approval, the statement of the relevant principle, by Scrutton LJ. as propounded in the case of Barnard v Scully, (1931), 47 TLR 557, Lord Donovan said at page 213;

> "No doubt, sometimes motor-cars were being driven by persons who were not the owners, nor the servants or agents of the owners.... But, apart from authority, the more usual fact was that a motorcar was driven by the owner or servant of the owner, and therefore the fact of ownership was evidence fit to go to the jury that at the material time the motor car was being driven by the owner of it or by his servant or agent, but it was evidence which was liable to be rebutted by proof of the actual facts."

(15) The local courts had long accepted this principle. In Matheson v G.O. Soltau and W.T. Soltau (1933) JLR 732 Clarke J. said at page 74.

> "The onus was on the plaintiff of proving who was the master or principal of the truck driver at the time of the collision.
>
> The evidence that he produced o this point was that the defendant WT Soltau was then the registered owner of the truck. It is now accepted in our courts that in the absence of satisfactory evidence to the contrary, this evidence is prima facia proof that the driver of a vehicle was acting as a servant or agent of the registered owner. The onus of displacing this presumption is on the registered owner, and if he fails to discharge that onus, the prima facie case remains and the plaintiff succeeds against him."

(16) The defendants here have shown two receipts which they claim constitute evidence of a sale of the vehicle to the 1st defendant. Counsel for the claimant says

these are of little probative value. The 2nd defendant has deponed that the 1st defendant is well known to the 3rd defendant, which was the basis for the sale. A cheque made out to Mr. Colin Jones, drawn on the Transport Authority's bank account at the National Commercial Bank, is also relied on. This cheque was tendered in evidence to prove the sale of the bus to the Transport Authority. However, among the correspondence exhibited to the affidavit of Audre Lois Reynolds, is a letter that explains the policy involved in the purchase of buses. There is also a list of persons from whom the Transport Authority purchased buses. The name of the 2nd defendant appears on that list but has a line running through it and the c/o Colin Jones appears below it. The defendants are relying on this to say that the bus was sold by Colin Jones. The claimant says that the closeness of the relationship between the 1st, 2nd and 3rd defendants should raise doubts about the authenticity of the sale.

(17) In any event, documents which purport to evidence the payment for the bus, can be seen as intended for the 2nd defendant, but directed for payment to be made to the 1st defendant. This view is reinforced by the Release and Discharge in respect of the same transaction, again signed for by the 1st defendant on behalf of the 1st and 2nd defendants. Why would the release and discharge be in the name of the 2nd and 3rd defendants if the vehicle has been sold? Was the bus still in receipt of a Road licence? If that is so, in whose name was that licence issued, bearing in mind that the road licence is not transferable? Why are the licence plates that are presumably those of the 2nd and 3rd defendants still on the vehicle? There is clearly an arrangement between the defendants that would allow the first named defendant to sign a Release on behalf of the other two defendants.

(18) The claimant has suffered severe injuries and has been unable to locate the 1st defendant, who has been joined as an ancillary defendant. The defendants have not discharged the evidential burden that shifted to them as the registered owners.

(19) The defendants have submitted that in the absence of an assertion of agency by the defendants, there cannot be any liability in respect of the defendants for the actions of the driver.

The principles established in **Ormrod v Crosville Motor Services Ltd. (1953) 1 WLR 409** is apposite, where **A** was held liable for damages done by **B**,

who was driving from **C** to **E** where he was to collect **A** and proceed on holidays, **B** was to meet friends at **D**; shortly after doing so he had an accident.

At trial, Devlin J., the trial judge said at p 410;

> "It is clear that there must be something more than the granting of mere permission in order to create liability in the owner of a motorcar for the negligence of the driver to whom it has been lent. But I don't think it is necessary to show a legal contract of agency. It is an area between the two that this is to be found, and it may be described as the case where, in the words of du Parcq LJ, there is a social or moral obligation to drive the owner's car."

Upheld in the Court of Appeal (1953) 1 WLR 1120. Lord Denning said at page 1123:

> "This puts an especial responsibility on the owner of a vehicle who allows it out on to 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, then the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it out or hires it out to a third person to be used for a purposes in which the owner has no interest or concern; see Hewitt v Bonvin (1940)."

That is not this case. "This is a commercial vehicle that requires a special road licence, insurance and carries fee-paying passengers; it seems to me that ownership of such a vehicle fixes the owner with interest and concern.

(20) The applicant has failed to prove that the claimant has no real prospect of succeeding on this claim. The application is dismissed, cost to the claimant to be agreed or taxed.