Privy Council Appeal No. 26 of 1955

The Trust Company Limited - - - - - - - - *Appellant*

v.

T. H. I. de Silva - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1956

Present at the Hearing:

LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

The respondent (hereinafter referred to as "the plaintiff") suffered personal injuries by reason of the negligent driving by one Holsingher of a motor car in which he was a passenger on a journey from Colombo to Jaffna on 27th April, 1950.

The question in the appeal is whether the appellant (hereinafter referred to as "the Company") is responsible for Holsingher's negligence.

The plaintiffs' claim failed at the trial in the District Court of Colombo on 8th March, 1951, but this judgment was reversed on appeal by the Supreme Court of Ceylon on 29th October, 1953, when judgment was directed to be entered in his favour for Rs.50,000/- with costs.

The Company transacts insurance business in Ceylon with its principal place of business and registered office in Colombo. Some of its business comes through canvassers who are paid commission on business introduced by them but receive no salary. Holsingher was one of these canvassers. The Company employ three "field officers" or "field organisers". Their duties are to supervise and control the canvassers and to assist them to bring in business. They are paid a salary of approximately Rs.100/- a month and an overriding commission on business introduced through them. They are answerable to the secretary of the Company who performs the duties generally carried out by a managing director. Any canvasser or field officer bringing in a proposal for life insurance must forward with it a doctor's certificate with regard to the proponent. It is left to the canvasser or field officer to select the doctor and make the necessary arrangements for medical examinations but the doctors' fees are paid by the Company. Doctors normally provide their own transport. A field officer cannot function efficiently without a car. One of these field officers was named Perera. He was supplied with a car by the Company under a hire purchase agreement dated 30th July, 1948, by which Perera

agreed to pay at least Rs.200/- a month towards the full purchase price of Rs.5,875/- plus interest at 6 per cent. On payment in full the car was to become the property of Perera. The agreement recited that Perera was employed by the Company as one of its field officers and that under the conditions of his appointment he was obliged to discharge certain obligations and that with a view to helping him discharge these obligations the Company had lent him the money to purchase a car in the name of the Company.

There was a conflict of evidence at the trial as to the circumstances in which the plaintiff came to be travelling in the car at the time of the accident. Holsingher's evidence was to the effect that the plaintiff had borrowed the car for his own exclusive benefit in order to fulfil an undertaking to travel to Jaffna at his own cost and expense for the purpose of examining a number of proponents for Holsingher. It is implicit in the judgment of the District Judge that he rejected this story and accepted the plaintiff's version which was that he had stipulated that transport should be supplied for the journey from Colombo to Jaffna, a distance of 248 miles. Holsingher agreed and arranged with Perera for the use of his car. On the journey there were present in the car the plaintiff, Holsingher, Perera and a paid driver named Gunapala. Perera, Holsingher and Gunapala took turns in driving the car. At the time of the accident Holsingher was driving and Perera was sitting in the back seat.

The plaint was framed on the basis that Holsingher was an employee of the Company acting within the scope of his employment, but the case was argued on the alternative ground that Holsingher was under the control of Perera who was a servant of the Company acting on its behalf. The Judge dealt with the case on this basis without requiring any amendment of the pleading and no objection has been taken to this course at any stage of the proceedings. He held that Holsingher was not a servant of the Company nor was Perera when driving the car on this journey, and that if the accident had happened while he was driving the Company would not have been liable. Consequently no liability could attach to the Company while Holsingher was driving.

The Supreme Court reversed this judgment on the ground that Perera was a servant of the Company and that at no stage had he divested himself of his character as a servant authorised to act on behalf of the Company. That throughout the journey the car was through Perera's instrumentality being used on the Company's business, and that a contractual obligation binding on the Company had been entered into by Holsingher with the knowledge and approval of Perera to convey the plaintiff to Jaffna and that the car was being used as a means of transport which was clearly incidental to the execution of that which Perera was employed to do.

Their Lordships consider it is clear that Perera was a servant of the Company and that in making this journey in the car which had been supplied to him for the purpose of carrying out his duties he was acting in the course of and for the purposes of his employment. (See *Canadian Pacific Railway Company* v. *Lockhart* [1942] A.C. 591.) Accordingly if the accident had happened while he was actually driving there can be no doubt that the Company would have been liable. Can it escape liability because Holsingher was at the wheel at the moment of accident? Their Lordships are of opinion that this question must be answered in the negative. It is now well settled that the person in control of a carriage or motor vehicle—though not actually driving—is liable for the negligence of the driver over whom he has the right to exercise control. (See *Wheatley* v. *Patrick* 2 M. & W. 650, *Samson* v. *Aitchison* [1912] A.C. 844 and *Reichardt* v. *Shard* (1914) 31 T.L.R. 24.) Perera was at all times in control of this car. He was exercising that control as a servant of the Company on its behalf. Any consequential liability attaching to him is a liability of the Company.

Their Lordships do not consider it is necessary for the decision of this case to express any view on the question which was much canvassed at the Bar as to whether Perera had authority to delegate the driving of the car to Holsingher so as to create a direct relationship of master and servant or principal and agent between Holsingher and the Company, nor do they base their decision on the view that the Company was contractually bound to provide transport for the plaintiff on this journey.

For the reasons indicated above their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant Company must pay the respondent's costs of the appeal.

(39648) Wt. 8084—69 100 4/56 D.L.

In the Privy Council

THE TRUST COMPANY LIMITED

v.

T. H. I. de SILVA

[DELIVERED BY LORD TUCKER]

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