IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 45 of 1977

Between:

SHIU PRASAD s/o
Mahadeo Prasad — Appellant

- and -

1. BHAGWANDEI d/o Mahadeo Prasad
2. YANKATESH NAIDU s/o Narsimlu Naidu
3. SUVA MOTORS LIMITED
4. TANIELA VODO

Respondents

H.C. Sharma for the Appellant
R.I. Kapadia for the 1st Respondent
M.V. Pillai for the 2nd Respondent
B.C. Patel for the 3rd Respondent
4th Respondent in person.

Date of Hearing: 15th March, 1978
Date of Judgment: 22nd March, 1978

JUDGMENT OF THE COURT

Marsack, J.A.

This is an appeal against the judgment of the Supreme Court given at Lautoka on the 12th August 1977 awarding damages of $1,700 and costs to the first respondent as administratrix of the estate of Narendra Deo, who was killed in a motor

collision at Wairabetia, Lautoka on 21st November 1973. The deceased and one Prem Singh were travelling in a motor car belonging to the appellant and driven by one Ashok Kumar the son of the appellant. The learned Judge's finding that Ashok Kumar was solely responsible for the collision, and that there was no contributory negligence on the part of the driver of the other vehicle concerned, was not challenged. The quantum of damages is not questioned. Accordingly the sole issue before this Court is whether the appellant can be held liable for the negligence of his son.

The legal authorities on the subject of vicarious liability were thoroughly canvassed both in the Supreme Court and at the hearing before us. In the Privy Council case of Rambarran V. Gurrucharan (1970) 1 ALL E.R. 749 at page 751 Lord Donovan expressed the principle that the ownership of a car was prima facie evidence that it was being driven by the owner, his servant or agent, but this presumption was rebuttable. The learned trial Judge held that in the present case the presumption had not been rebutted, and that the appellant was vicariously liable for the negligence of his son.

The evidence on this issue was very scanty. The son Ashok Kumar was not called as a witness. The appellant, in the course of his very short evidence, deposed

that Ashok Kumar his son used to drive the car when it was necessary "and if I was not around he could drive without my permission". He goes on to say :-

> " The deceased at the time was visiting my home.
>
> Prem Singh was at that time a cane cutter; I was paying him. He paid his own expenses.
>
> On day of accident Prem Singh and Narrendra Prasad had gone out shopping for milk and baby food for Prem Singh's child. It was on their way home that the accident must have happened. "

It could we think properly be inferred from this evidence that the appellant's employee Prem Singh, as well as guest Narendra Deo, were staying at the appellant's home; and that there was at least some obligation on the appellant to provide reasonable facilities for his cane cutter to obtain what was necessary for the members of his family. Some suggestion was made at the hearing that the deceased had just gone along for the ride; in which case it could be said that the appellant's son was furnishing some service to his father by providing transport for the family guest.

In any event it seems clear that there was no onus on Ashok Kumar himself to provide this service for his father's employee Prem Singh, or to entertain the family guest, Narendra Deo. Any such obligation would lie on the appellant.

Consequently it could properly be said that the car was being used

> "wholly or partly on the owner's business or in the owner's interest,"

in which case, as is said in Omerod v. Crosville Car Services 1953 1 W.L.R. 1120 at p. 1123, the owner is liable for any negligence on the part of the driver. In our opinion there was ample evidence to justify the inference drawn by the learned trial Judge, that at the relevant time Ashok Kumar was acting as agent for his father the appellant, and accordingly vicarious liability for the son's negligence in these circumstances attached to the father.

For these reasons the appeal is dismissed. The appellant will pay the first respondent's costs, to be taxed if not agreed. As to second and third respondents, they were served and were represented at the hearing, though they took no part in the argument. We allow each of them $20 costs against the appellant.

(Sgd.) T.J. Gould
VICE PRESIDENT

(Sgd.) Charles C. Marsack
JUDGE OF APPEAL

(Sgd.) T. Henry
JUDGE OF APPEAL

SUVA,
22nd March, 1978.