SHIU DAYAL

*v.*

KHADIM ALI

[SUPREME COURT, 1963 (Hammett J.), 9th November, 1962, 11th January, 1963.]

Appellate Jurisdiction

Master and servant—vicarious liability—negligent driving—servant driving purely for own purposes.

A master who has given permission to his servant to use the master's vehicle for the servant's private purposes, is not vicariously liable for the negligent driving of the servant provided that at the time of the negligent driving the servant was in fact using the vehicle purely for his own private purposes.

Cases referred to:

*Britt v. Galmoye* (1928) 44 T.L.R. 294; 72 S.J. 122: *Higbid v. Hammett* (1932) 49 T.L.R. 104.

*Appeal from judgment of Magistrate's Court.*

*Ramrakha* for the appellant.

*Stuart* for the respondent.

HAMMETT P.J. [11th January, 1963]—

This is an appeal from the decision of the Magistrate's Court sitting at Ba, whereby the plaintiff/respondent was awarded £42 16s. 6d. damages, being the cost of the repair of the damage caused to his taxi, No. C985, in a collision with lorry No. 8656 owned by the defendant/appellant, which was being driven at the time by one Butru. It is not disputed that Butru was the servant of the appellant and that the damage was caused by the negligent driving of Butru.

The learned trial Magistrate held that Butru was employed by the appellant as a driver and that by virtue of such employment Butru had the appellant's permission to use the lorry for his, Butru's, own private purposes. At the time of the accident Butru was driving the lorry for his own private purposes, i.e. to get ice blocks for his, Butru's own children.

The only ground of appeal relied on and argued by the appellant is as follows:—

> " The learned trial Magistrate erred in law and in fact in holding that the appellant was vicariously liable to the respondent and/or that the driver Butru was at the material time a servant or agent of the appellant."

The learned trial Magistrate held that since Butru was employed by the appellant as a driver, and had the permission of the appellant, the owner of the lorry, to use it for his, Butru's private purposes, the appellant was vicariously liable for the negligent driving of Butru whether he was at the time driving on behalf of the appellant or for his, Butru's, own private purposes.

This is not the law. *Charlesworth on Negligence*, 3rd Edition, at page 69 sets out the position clearly where it is stated:

> " The fact that a servant is permitted to use his master's vehicle does not make the master liable for the servant's negligence in using that vehicle, unless it is being used for the master's business."

The cases of *Britt v. Galmoye* (1928) 44 T.L.R. 294 and *Higbid v. Hammett* (1932) 49 T.L.R. 104 clearly support this principle.

In my opinion there were no grounds upon which the appellent could properly be held liable for the negligent driving of his servant Butru, at a time when Butru was driving the appellant's vehicle, with the appellant's permission, but purely for his, Butru's, own private purposes.

For these reasons, the appeal is allowed with costs.

*Appeal allowed.*

Solicitor for the appellant: *A. M. Raman.*

Solicitors for the respondent: *K. A. Stuart and Co.*