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YASIN KHAN AND OTHERS

v.

RAVINANDAN KAPIL VILASH

B [SUPREME COURT, 1964 (Hammett Ag. C.J.), 28th February, 17th April]

Appellate Jurisdiction

Master and servant—vicarious liability—negligent driving—whether vehicle driven on owner's behalf—evidence raising prima facie case.

C *Evidence—negligent driving—proof of relationship of master and servant between owner and driver—evidence raising prima facie case.*

Tort—negligent driving—ownership of vehicle as factor in proof of vicarious liability.

In an action for damage to his vehicle caused by the negligence of the driver of a motor-bus, the respondent proved that the bus was owned and operated by the first three appellants, that at the time of D the collision it was being driven by the fourth appellant on a route along which the first three appellants held a licence to operate buses, and that at the time of the accident the bus was carrying some twenty passengers. On the issue whether the first three appellants were vicariously liable for the negligence of the fourth appellant —

Held: 1. The facts abovementioned as found by the magistrate E amounted to *prima facie* proof raising a rebuttable presumption that at the time of the collision the bus was being driven by the fourth appellant as the servant or agent of the first three appellants.

2. On the evidence before him the magistrate was fully entitled to hold that the presumption had not been rebutted.

Appeal from judgment of a Magistrate's Court.

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A. M. Raman for the appellants.

Z. K. N. Dean for the respondent.

The facts sufficiently appear from the judgment.

HAMMETT Ag. C.J.: [17th April, 1964]—

G The first three defendant appellants carry on business as bus operators in partnership under the name "Allied Transport Co." One of the buses they operate, of which they are registered as the owners, bears registration number 3709. On the 2nd June, 1964, this bus No. 3709 was being driven by the fourth defendant when it came into collision with the car owned by the plaintiff respondent to which it caused considerable damage.

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The site of the collision was on the route along which the Allied Transport Co. hold a licence to operate buses and at the time of the accident this particular bus was carrying some twenty passengers.

In the Court below it was conceded that the collision was caused by the negligent driving of the fourth appellant. It was agreed by both Counsel at the outset of the trial that the only issues for determination by the Court were:

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(a) whether the first three appellants were vicariously liable for the negligence of the fourth appellant,

and (b) the quantum of damages.

In his judgment the learned trial Magistrate awarded the plaintiff respondent £130.3.9 damages for negligence against the fourth appellant and gave judgment against the first three appellants for the same sum on the ground that they were vicariously liable for the negligence of the fourth appellant.

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No appeal has been lodged against the quantum of damages awarded and at the hearing of the appeal Counsel for the appellants conceded that he can now only challenge the findings of the Court below against the first three appellants on the issue of vicarious liability. This was the only issue argued before me under the general ground that the decision of the Court below is unreasonable and cannot be supported by the evidence. The appeal of the fourth appellant must, therefore, be dismissed.

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The case for the first three appellants was that the fourth appellant at the time of the accident was not driving their bus as their servant and that they are not, therefore, vicariously liable for the results of his negligence. In support of this the first and second appellants gave evidence and called one of their regular drivers who gave evidence to the same effect that the fourth appellant was not and never had been an employee of the first three appellants. This was supported by the testimony of the fourth appellant. The first three appellants produced in evidence their books of account, showing the system under which the takings of their buses were recorded, in an attempt to prove that no takings had been received from the operation of this particular bus, No. 3709, on the day in question, namely Sunday 2nd June, 1963.

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Evidence was also given by the fourth appellant that he borrowed this bus from the first appellant, his brother-in-law, on the day in question in order to take his wife and children on a visit to his mother-in-law. He said that after making that visit he used the bus as a private car to take himself alone to see a football match. After the football match he was merely returning home in this bus still being used by him as a private car. He maintained that the fact that there were some twenty passengers in it at the time of the collision was purely fortuitous. He asserted they were merely friends and players to whom he was giving a free lift back to Ba town after the football match and it was merely a coincidence that it happened to be following the scheduled route along which the Allied Transport Co. holds a licence to operate buses and over which this bus does at times operate.

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The learned trial Magistrate noted certain alterations in the books of account of the Allied Transport Co. He held that they had been

falsified and forged in an unsuccessful attempt to show that the takings of bus No. 3709 which had been entered on Docket No. 2616 had been earned by the operations of this bus on 8th June, 1963, instead of on 2nd June, 1963. In the absence of any acceptable evidence to show and explain what in fact were the obvious alterations on Docket No. 2616 I am doubtful whether it was open to the Court below to arrive at such definite findings. It was, however, clearly only open to the learned trial Magistrate to infer that in a book of serially numbered dockets each bearing dates in chronological sequence, except No. 2616 on which the date had been altered, that Docket No. 2616 was entered up after the preceding Docket No. 2615 which is clearly dated 1st June, 1963, and before the succeeding Docket No. 2617 which is clearly dated 3rd June, 1963. In the absence of any evidence to the contrary, which was acceptable to him, (and such evidence as there was the learned trial Magistrate said he did not believe), it was therefore open to him to decline to accept these books of account as in any way supporting the testimony of the appellants that bus No. 3709 was not operated on 2nd June, 1963, by the fourth appellant as their servant or agent. This the learned trial Magistrate clearly did.

The position, therefore, was that the Court below did not believe the oral evidence and did not accept the documentary evidence called by the first three appellants that at the time of the collision their bus was being driven by the fourth appellant for his own purposes and not as their agent.

The result of the case appears to me to depend on where the onus of proof lay, in such circumstances. The plaintiff respondent had proved that this bus owned by the Allied Transport Co. was travelling along a schedule route carrying passengers at the time of the collision. None of these passengers was called to give evidence. They were said to be friends of the fourth appellant and their identity, if this was true, would be well-known and easy to establish. Not one was called to support the contention of the appellants that they were not fare paying passengers.

In this connection the passage appearing in *Mazengarb's "Negligence on the Highway"* 3rd Edition at page 82 is of some relevance. The learned author in the chapter entitled "Vicarious Liability" under the headnig — "1. Ownership as *prima facie* evidence of responsibility", writes "Evidence of ownership of a motor vehicle may sometimes suffice as *prima facie* proof that it was being driven on the owner's behalf at the time of the occurrence giving rise to the cause of action".

I have examined and considered the several authorities cited by the learned author and I am of the opinion that in the particular circumstances of this case, on the findings of fact reached by the learned trial Magistrate based on the credibility of the witnesses, there was *prima facie* proof raising a rebuttable presumption that at the time of the collision in this case the appellants' vehicle was being driven by the fourth appellant as their servant or agent. The learned trial Magistrate was, in my view, fully entitled on the evidence before him to hold that the appellants have been wholly unsuccessful in their attempt to rebut this presumption.

For these reasons the appeal of the first three appellants must also be dismissed.

The respondent is awarded the taxed costs of this appeal against all four appellants. A

Appeal dismissed.