

A

**FIJI ELECTRICITY AUTHORITY**

v.

**BALRAM & OTHERS**

B

[SUPREME COURT, 1972 (Goudie J.), 28th February, 3rd March]

Civil Jurisdiction

*Practice and procedure—amendment of pleadings—may be ordered at any stage if no injustice occasioned—Rules of the Supreme Court 1968, O.20 r.5.*

C

*Evidence and proof—collision between motor vehicles—ownership of defendant's vehicle proved—no direct evidence that driver servant or agent of owners—presumption arising from ownership in absence of evidence to contrary.*

*Negligence—collision between vehicles—presumption arising from proof of ownership in absence of rebutting evidence that driver servant or agent of owners.*

An amendment to pleadings may be permitted by the court at any stage of the proceedings for the purpose of determining the real question in controversy and, if it can be made without injustice to the other side, should be allowed however late, and however negligent or careless may have been the first omission.

D

Where, in an action for damages arising out of a collision with the defendants' omnibus the plaintiff did not call any direct evidence that the vehicle was, at the material time, being driven by the defendants' servant or agent, but the defendants themselves called no evidence, the court, following *Bernard v. Sully* (1931) 47 T.L.R.557, held that proof of ownership was prima facie evidence to that effect.

E

Other cases referred to :

*G. L. Baker Ltd. v. Medway Building & Supplies Ltd.* [1958] 3 All E.R. 540; [1958] 1 W.L.R. 1216.

F

*Clarapede v. Commercial Union Association* (1883) 32 W.R.263.

*The Duke of Buccleugh* [1892] P.201; 67 L.T.739.

G

Action in the Supreme Court for damages arising out of a collision between motor vehicles.

R. G. Kermode for the plaintiff.

D. N. Sahay for the defendants.

H

The facts sufficiently appear from the judgment.

3rd March 1972

GOUDIE J. :

A This is an Action for damages for negligence arising out of a collision between a bus and a van at a road junction at Tacirua, Prince's Road, on the afternoon of October 13th, 1967.

B In the Statement of Claim, the plaintiff Authority referred to the bus as "Registered No. 2404." At the commencement of the hearing plaintiff's counsel handed in, by consent, a certified copy of a registration document (Exhibit 1) in respect of a bus owned by "United Transport Company, registered No. 2403" and a certified copy (Exhibit 2) of the registration of the firm of "United Transport Company" showing the defendants as partners in the said firm. It was common ground that the only other partner mentioned in the certificate of registration (Exhibit 2) is dead.

C The plaintiff Authority called the driver of the van which was involved in a collision with the bus and he (PW 3) referred to the bus being registered No. 2403 with the name of United Transport Company marked on the side of the bus. A passenger (PW 4) referred to a collision with "United Transport Company's bus". He was not cross-examined as to the ownership of the bus.

D At the close of the plaintiff's case, the defendants offered no evidence and their Counsel submitted that the defendants had no case to answer, since plaintiff's witness had referred to a bus "registered No. 2403", whereas the Statement of Claim referred to a bus registered No. 2404. Moreover, the Statement of Claim made no mention of the United Transport Company.

E Plaintiff's counsel then applied to amend the registration number of the bus in the Statement of Claim so as to read "2403" instead of "2404".

F Order 20 Rule 5 of the Rules of the Supreme Court make it abundantly clear that the Court has jurisdiction "at any stage of the proceedings" to allow the plaintiff to amend his writ, or any party to amend his pleadings, and that all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings" per *Jenkins L. J. in G. L. Baker Ltd. v. Medway Building Supplies Ltd.* [1958] 1 W.L.R. page 1231.

G Moreover, "however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side" — per *Brett, M.R. in Clarapede v. Commercial Union Association* 32 W.R. page 263. Amendments may be allowed before, or at, or after the trial or even after judgment or on appeal (*The Duke of Buccleugh* [1892] P.201).

H In my view, it was abundantly clear at the outset of the hearing when Exhibit 1 and Exhibit 2 were put in by consent, that it was sought to hold the defendants liable as partners in the United Transport Company "General Carriers and Bus Proprietors", and as owners of bus registered No. 2403. It would, in my view, be stretching coincidence too far to suppose that two United Transport Company buses with different registration numbers were involved in an exactly similar collision with a van registered No. R190 on the same day and at the same place. It seems, therefore, to me to follow that, as the plaintiff's driver said on oath, it was United Transport Company bus registered No. 2403 that was involved

in the collision and not 2404, as shown in the Statement of Claim. It follows further that the number "2404" in the Statement of Claim is, in fact, a typographical error which must be well known to the defendants and they ought not to be allowed to take advantage of an obvious error in order to avoid possible liability. The amendment to the Statement of Claim is allowed accordingly and the Court has substituted the number "2403" for "2404" in paragraph 2 of the Statement of claim. A

Plaintiff's Counsel admitted that there was no direct evidence that the bus was driven by a servant or agent of the United Transport Company at the material time. He submitted, however, that since no evidence had been called to suggest that any unauthorised person was driving the vehicle, and since it had been suggested in the cross-examination that the collision occurred at a "turning point" used by buses, it was reasonable to presume that the bus was on a normal journey and being driven by a servant or an agent of the United Transport Company. In my view, this is a reasonable conclusion. I would, however, prefer to rely on an appellate decision of the King's Bench Division in *Bernard v. Sully* (1931) 47 T.L.R. at page 557, in which it was decided that proof of ownership of the vehicle is prima facie evidence that the vehicle at the material time was being driven by the owner or his servant or agent. In the present case, no evidence was called to rebut this. B C

On the merits of the case, there can, in my view, be no possible doubt that negligence was established against the bus driver. It was undisputed that the bus was reversing from the minor road on to the major road. This would be an extremely dangerous practice and would probably have amounted to negligence even if there had been someone behind the bus to warn on-coming traffic. In the present case, not even this precaution was taken. It was put to the van driver (PW 3) twice in cross-examination that only a few feet of the back portion of the bus was protruding into the main road when the collision occurred. I can see no reason to suggest that even if this was so, it would show any negligence on the part of the van driver. Persons driving on a public highway are not expected to anticipate buses coming out backwards on to a main road from a minor road. It is to be hoped that the suggestion in the cross-examination that the minor road was a "turning point" for buses does not mean that bus drivers of this company or any other bus company make a practice of turning their buses by reversing onto main roads, a traffic offence in itself. D E F

It was submitted that damages were not properly proved, but the proof was sufficient to satisfy this Court that they ought to be granted as prayed. There will, therefore, be judgment for the plaintiff Authority for \$1211.80 as prayed. As regards costs, the failure to check the pleadings with the documents, shows a certain degree of carelessness which has unnecessarily complicated a very straightforward case. The parties will bear their own costs of these proceedings. G

*Judgment for plaintiff.*