1978 June 15

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

HELLENIC MINING CO. LTD.,

*Appellants-Plaintiffs,*

*v.*

GALAXY TOURS LTD.,

*Respondents-Defendants.*

(*Civil Appeal No.* 5494).

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*Negligence—Vicarious liability—"Self-drive car"—Hired out to third party—Accident caused by negligent driving of third party—Whether owner of car vicariously liable.*

The only issue for consideration in this appeal was whether the respondents as owners of a "self-drive car", which had been hired out by them and was being driven by a certain Miss Wey, were vicariously liable for the negligence of Miss Wey when she collided with a car belonging to the appellants.

*Held,* that in order to fix liability on the owner of a car for the negligence of its driver it is necessary to show that either the driver is the owner's servant, or that, at the material time, the driver was acting on the onwer's behalf as his agent; that to establish the existence of the agency relationship it is necessary to show that the driver was using the car at the owner's request, express or implied, or on his instructions, and was doing so in performance of a task or duty thereby delegated to him by the owner; that the fact that the driver was using the car with the owner's permission, and that the purpose for which the car was being used was one in which the owner had an interest or concern, is not sufficient to establish vicarious liability; and that, in the circumstances of the present case, the respondents as hirers of the car could not have been held vicariously liable. (Principles expounded in *Morgans* v. *Launchbury and Others* [1972] 2 All E.R. 606 followed there existing

no conflict between these principles and section 12 (1) (a)* of Cap. 148).

*Appeal dismissed.*

Cases referred to:

*Morgans* v. *Launchbury and Others* [1972] 2 All E.R. 606.

**Appeal.**

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Anastassiou, D.J.) dated the 18th June, 1975, (Action No. 159/74) dismissing their claim for special damages caused to a car belonging to them, as a result of a road traffic accident between a car driven by one of their employees and a "self drive car" belonging to the respondents and which had been hired out by them to, and was being driven by, a third party.

*K. Chrysostomides*, for the appellants.

*D. Demetriades*, for the respondents.

The judgment of the Court was given by:

TRIANTAFYLLIDES P.: The present proceedings have arisen as a result of a traffic collision which occurred between a car, No. DN805, belonging to the appellants, which was being driven by one of their employees, and a car, No. ZFB394, belonging to the respondents, which is what is commonly known as a "self-drive car" and which had been hired out by the respondents to, and was being driven by, a certain Miss Maria Theresa Wey from Switzerland.

At the hearing before the trial Court the parties reached an agreement as regards the amount of damages and the respective degrees of liability for the collision, by way of negligence, of the two aforesaid drivers; and the only matter which remained in dispute was whether the respondents, as hirers of the self-drive car in question, were vicariously liable for the negligence of Miss Wey. The trial Court found that they were not and it is against this part of its judgment that the present appeal has been made.

We do not think that it is really necessary to refer to all

* Quoted at pp. 419-20 *post*.

the case-law which has been diligently cited to us by counsel on both sides, because such case-law has been reviewed and considered by the House of Lords in England in *Morgans* v. *Launchbury and Others*, [1972] 2 All E.R. 606; and it is useful to quote the following passages from the judgments delivered in that case in which the relevant principles of law are expounded; Lord Wilberforce said (at p. 609):-

> " It is said, against this, that there are authorities which warrant a wider and vaguer test of vicarious liability for the negligence of another; a test of 'interest or concern.' Skilled counsel for the respondents at the trial was indeed able to put the word 'concerned' and 'interest' into the wife's mouth and it was on these words that he mainly rested his case.
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> On the general law, no authority was cited to us which would test vicarious liability on so vague a test, but it was said that special principles applied to motor cars. I should be surprised if this were so, and I should wish to be convinced of the reason for a special rule. But in fact there is no authority for it. The decisions will be examined by others of your Lordships and I do not find it necessary to make my own review. For I regard it as clear that in order to fix vicarious liability on the owner of a car in such a case as the present, it must be shown that the driver was using it for the owner's purposes, under delegation of a task or duty. The substitution for this clear conception of a vague test based on 'interest' or 'concern' has nothing in reason or authority to commend it. Every man who gives permission for the use of his chattel may be said to have an interest or concern in its being carefully used, and, in most cases if it is a car, to have an interest or concern on the safety of the driver, but it has never been held that mere permission is enough to establish vicarious liability. And the appearance of the words in certain judgments (*Ormrod* v. *Crosville Motor Services Ltd*[1] per Devlin J. and per Denning L.J.[2]) in a negative context (no interest or concern, therefore no agency) is no warrant whatever for transferring them into a positive test. I accept entirely

1. [1953] 1 All E.R. 711.
2. [1953] 2 All E.R. 753.

that 'agency' in contexts such as these is merely a concept, the meaning and purpose of which is to say 'is vicariously liable' and that either expression reflects a judgment of value — respondeat superior is the law saying that the owner ought to pay. It is this imperative which the common law has endeavoured to work out through the cases. The owner ought to pay, it says, because he has authorised the act, or requested it, or because the actor is carrying out a task or duty delegated, or because he is in control of the actor's conduct. He ought not to pay (on accepted rules) if he has no control over the actor, has not authorised or requested the act, or if the actor, is acting wholly for his own purposes. These rules have stood the test of time remarkably well. They provide, if there is nothing more, a complete answer to the respondents' claim against the appellant."

Lord Pearson said (at pp. 613–614):-

"Mr Lords, in my opinion, the principle by virtue of which the owner of a car may be held vicariously liable for the negligent driving of the car by another person is the principle qui facit per alium, facit per se. If the car is being driven by a servant of the owner in the course of the employment or by an agent of the owner in the course of the agency, the owner is responsible for negligence in the driving. The making of the journey is a delegated duty or task undertaken by the servant or agent in pursuance of an order or instruction or request from the owner and for the purposes of the owner. For the creation of the agency relationship it is not necessary that there should be a legally binding contract of agency, but it is necessary that there should be an instruction or request from the owner and an undertaking of the duty or task by the agent. Also the fact that the journey is undertaken partly for purposes of the agent as well as for the purposes of the owner does not negative the creation of the agency relationship: *Hewitt* v. *Bonvin*[1], *Ormrod* v. *Crosville Motor Services Ltd.*[2], *Hilton* v. *Thanas Burton* (*Rhodes*) *Ltd.*[3],

1. [1940] 1 K.B. 188 at 194, 195.
2. [1953] 1 All E.R. 711; on appeal [1953] 2 All E.R. 753.
3. [1961] 1 All E.R. 74 at 76.

*Norton* v. *Canadian Pacific Steamships Ltd.*[1] *and Klein* v. *Calouri*[2]. I think there has to be an acceptance by the agent of a mandate from the principal though neither the acceptance nor the mandate has to be formally expressed or legally binding."

Lord Cross of Chelsea stated the following (at pp. 616–617):–

" The owner of the chattel will be liable if the user of it was using it as his servant or his agent: *Hewitt* v. *Bonvin*[3]. As the cases of *Ormrod* v. *Crosville Motor Services Ltd.*[4] and *Carberry* v. *Davies*[5] show the user need not be in pursuance of a contract. It is enough if the chattel is being used at the relevant time in pursuance of a request made by the owner to which the user has acceded. In deciding whether or not the user was or was not the agent of the owner it may no doubt be relevant to consider whether the owner had any interest in the chattel being used for the purpose for which it was being used. If he had no such interest that fact would tell against the view that the user was his agent while conversely the fact that the owner had an interest might lend support to the contention that the user was acting as the owner's agent. But despite the way in which the matter is put by Denning L.J. in the *Ormrod* case[6], I do not think that the law has hitherto been that mere permission by the owner to use the chattel coupled with the fact that the purpose for which it was being used at the relevant time was one in which the owner could be said to have an interest or concern would be sufficient to make the owner liable in the absence of any request by the owner to the user to use the chattel in that way."

Lord Salmon said (at p. 620):–

"So far as I know, until the present case, du Parcq L.J.'s statement of the law in *Hewitt* v. *Bonvin*[7], has never been questioned:

1. [1961] 2 All E.R. 785 at 790.
2. [1971] 2 All E.R. 701 at 702.
3. [1940] 1 K.B. 188.
4. [1953] 2 All E.R. 753.
5. [1968] 2 All E.R. 817.
6. [1953] 2 All E.R. at 755.
7. [1940] 1 K.B. at 194, 195.

'The driver of a car may not be the owner's servant, and the owner will be nevertheless liable for his negligent driving if it be proved that at the material time he had authority, express or implied to drive on the owner's behalf. Such liability depends not on ownership, but on the delegation of a task or duty.'

That is the principle to be applied, but as du Parcq L.J. pointed out, ultimately the question is always one of fact. Facts vary infinitely from case to case and it is easy, as du Parcq L.J. indicated, to think of facts which would fall just on one side of the line or the other. I agree with Megaw L.J.[1] that there is nothing in *Ormrod* v. *Crosville Motor Services Ltd.*[2] or in *Carberry* v. *Davies*[3] which differs from or extends the principle enunciated by du Parcq L.J. The short judgments in *Ormrod's* case[2] must be read against the background of its essential facts."

It is quite clear, therefore, that in order to fix liability on the owner of a car for the negligence of its driver it is necessary to show that either the driver is the owner's servant, or that, at the material time, the driver was acting on the owner's behalf as his agent. To establish the existence of the agency relationship it is necessary to show that the driver was using the car at the owner's request, express or implied, or on his instructions, and was doing so in performance of a task or duty thereby delegated to him by the owner. The fact that the driver was using the car with the owner's permission, and that the purpose for which the car was being used was one in which the owner had an interest or concern, is not sufficient to establish vicarious liability.

We should add, at this stage, that we cannot agree with the contention of counsel for the appellants that there exists a conflict between the principles of law expounded in the *Morgans* case, *supra*, and section 12 (1) (a) of the Civil Wrongs Law, Cap. 148, which provides that:–

" 12. (1) For the purposes of this Law –

(a) any person who shall join or aid in, authorise

1. [1971] 1 All E.R. at 654, 655.
2. [1953] 1 All E.R. 711; on appeal [1953] 2 All E.R. 753.
3. [1968] 2 All E.R. 817.

counsel, command, procure or ratify any act done or to be done by any other person shall be liable for such act;"

In the light of the above state of the law we have reached the conclusion that in the circumstances of the present case the respondents, as hirers of the self-drive car concerned, could not have been held vicariously liable for the negligence of Miss Wey.

This appeal, therefore, fails and it is dismissed with costs.

*Appeal dismissed with costs.*