

EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLIAM NO. 154 OF 2001

BETWEEN:

RAUL JACKSON

Claimant

VS

**ELROY WILLIAMS
PATRICK TRIMMINGHAM**

Defendants

Appearances -:

Mr. Ronald Burch-Smith for the Claimant
Mr. Arthur Williams for the first Defendant

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2003: February 5th
2003: September 24th
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JUDGMENT

[1] **BRUCE-LYLE, J-:** The issue to be determined in this case is a simple one – whether the first defendant Elroy Williams should be held liable for the negligence of the second defendant, if it is held that the second defendants driving and being involved in a collision with the claimants vehicle was in his capacity as a servant or agent of the first defendant. It was agreed that this issue of liability be determined, before assessment of damages at a later stage.

- [2] The claimant Raul Jackson was the only witness for his case. His evidence was based on his witness statement dated and filed on the 1st October 2002, and also oral evidence given at the trial. In his oral evidence in chief the claimant stated that before the accident he had never seen any of the two defendants before, and knew nothing concerning the arrangements between the two defendants concerning the car PD 272 until after the accident. Counsel for the claimant then informed the court that the claimant would stand by the contents of his witness statement as his evidence-in-chief.
- [3] Briefly the facts of the case are as follows. The claimant, who resides at Cane Hall and is the owner of motor vehicle P2689 was driving his motor vehicle on 31st July, 2000 along the Fairbaine Pasture road when there was a collision between his vehicle and motor vehicle PD 272 driven at the time by the second defendant Patrick Trimmingham, but registered and insured in the name of the first defendant Elroy Williams who claimed that the actual owner of the vehicle PD 272 was one Jackson Farrell who at the time resided in the United States of America. The first defendant also denied that at the time of the collision the second defendant was driving PD 272 as his servant or agent and with his express permission.
- [4] Mr. Elroy Williams in his defence filed, stated that Mr. Jackson Farrell, the actual owner of PD 272 was in St. Vincent and he took his motor vehicle PD 272 to the garage of the second defendant for the purpose of repairing a rotten spot in the trunk of the said vehicle. He further stated that it was while the said car was in the garage that the second defendant drove the car without the permission or consent of the first defendant Elroy Williams. He also stated that he was not aware of the matters stated in paragraph four of the claimants statement of claim where it states that the second defendant signed a document dated 10th September, 2000 by which he agreed to incur full responsibility for all damages to the claimants vehicle P 2689, an agreement which he has reneged on, leading to this trial, and in consequence of which the first defendant does not admit to any loss or damages suffered by the claimant.

- [5] Under cross-examination the claimant said he knew the second defendant but had no idea what he does, but that he did admit that he was liable for the accident and would repair the vehicle, but did not say if he would do so personally. The claimant said he therefore took his vehicle to a garage for repairs. He claimed that before the accident he never took his vehicle to the garage for any major repairs except for it to be serviced. He however agreed that if he took his vehicle to the garage for repairs, the repairman has his permission to drive the vehicle, and if there is an accident, he the claimant would also be responsible. But that in this case he has no knowledge as to whether the first defendant gave the second defendant permission to drive his vehicle. On being re-examined the claimant stated that he was not a lawyer, and had no legal training, and knew nothing about moral responsibility or legal responsibility.
- [6] Interestingly the claimant stated in his witness statement that after the accident he discovered that the first defendant had entrusted the car to the second defendant who was his mechanic to do repairs.
- [7] The defence also called one witness Mr. Elroy Williams, the first defendant, who is a teacher by occupation. He also relied heavily on his witness statement dated the 30th October 2002. He also gave oral evidence—in-chief in which he stated that he knew the second defendant Patrick Trimmingham as a vehicle body repairman. He said he knew motor vehicle PD 272 and that it actually belonged to Mr. Jackson Farrell, but that he was the caretaker of it, and that it was registered in his name. He also said that he knew there was a rot in the trunk of the said vehicle, but that he did not give Mr. Trimmingham any instructions pertaining to the vehicle.
- [8] In his witness statement Mr. Elroy Williams stated that Jackson Farrell who is the owner of PD 272 was in St. Vincent on the 31st July, 2000 and took the said vehicle to Patrick Trimmingham's garage, to repair a rotten spot in the trunk of the said vehicle. He further said while PD 272 was in the said garage, Patrick Trimmingham drove the car. He said he never gave Trimmingham permission or consent to drive the said car and that in any event

when Mr. Farrell was in St. Vincent as he was on the 31st July, 2000 he had control of the car as the rightful owner, and any decisions regarding the car were made by Mr. Farrell.

[9] Mr. Elroy Williams further stated that he learnt after the accident, that the car PD 272 had been taken to the garage for repairs and that while the said car was in the garage the second defendant drove the car for his own personal use and the car was involved in an accident, and whereby the second defendant accepted that he was responsible. He insisted that he did not give the second defendant permission to drive PD 272 or to sign any document whatsoever, and that at no time was the second defendant driving the said vehicle as his servant or agent and therefore he was in no way responsible for the actions of the second defendant, including any documents which he may have signed.

[10] Under cross-examination Mr. Elroy Williams admitted that PD 272 was also insured in his name, and that he drove it occasionally. He said apart from saying so he had nothing else to show that Mr. Farrell was the owner of the car, except that the vehicle is based at Mr. Farrell's house and he takes control of it when he is in the state and that Mr. Trimmingham was not driving the vehicle as his Williams' servant or agent. This signified the case for the 1st defendant.

[11] Learned Counsel for the first defendant Mr. Arthur Williams submitted that since the trial bundle at page 7 referred to a letter signed by Patrick Trimmingham accepting responsibility in whole for the accident he the second defendant cannot be considered a servant or agent of the first defendant, and that Trimmingham was on a frolic of his own. He therefore asked that the matter against the first defendant be dismissed with costs.

[12] Counsel for the claimant argued that the trial bundle does not form part of the evidence, and that the claimants case was solely seeking damages from the registered owner of PD 272 for the damages to his car. He cited the case of Brown Vs Stamp & Others, (1968) 13 WIR and the fact that no evidence had been led by the defence to rebut the presumption of ownership, and that as a matter of law the claimants case should succeed. In reply Learned Counsel for the first defendant stated that there was evidence that the second

defendant was not given permission to drive the car PD 272, and that PD 272 being a private vehicle, the position as regards the presumption of ownership was different.

ANALYSIS

[13] Having regard to the learning in the case of *Brown v Stamp and others* (1968) 3 WIR at Pg 146 and in particular at Pg 149 Paragraph I -:

*“From the judgment of Fox J.A. In our view of the law, the position is clear. Where there is no evidence as to the relationship between the owner and the driver at the material time, there is a prima facie presumption that the driver was the servant or agent of the owner. This was the situation in the case of *Barnard v Sully*. Where there is evidence as to this relationship, such evidence may either (a) strengthen rather than displace the presumption, as in *Martin v Soltan*: or (b) displace the presumption as in *Hopkinson v Lall* and *Hewitt v Bonvin*.”*

[14] In this instant case there is evidence from the first defendant to the effect that even though the vehicle was registered and insured in his name; a position which leads me to the inexorable conclusion that he was technically the owner of PD 272, he did not take the said vehicle to the second defendant Trimmingham for repairs, as the actual owner of the car had taken control of the car since his arrival in St. Vincent from the United States of America and so he had no knowledge of any arrangements with the second defendant.

[15] In as much as one would say that this was a weird arrangement as between the first defendant and Mr. Jackson Farrell, I hold that there is nothing in the evidence to render this arrangement as being incredible. It does not touch on the credibility of the first defendant and I believe him when he said that Mr. Jackson Farrell actually owned the said vehicle even though it was not registered or insured in his name. Besides, there is nothing to rebut Mr. Williams evidence that the vehicle PD 272 was sent to Patrick Trimmingham for body repairs for a defect in the engine or some other movable part of the vehicle that would require a test-drive. It is my view that the nature of the repairs to the vehicle should not have warranted or occasioned a test drive, and if the vehicle was being driven, then it was being driven by the second defendant on his own volition. I believe the first defendant

when he says the vehicle was being driven by the second defendant without his permission or consent.

[16] There is also the evidence from the claimant that the second defendant accepted responsibility wholly for the accident and agreed to be responsible for the repairs to the claimants vehicle. This acceptance of liability letter, even though included in the trial bundle, was not tendered in evidence. It was the claimants counsel who was ordered to prepare the trial bundle at the Case Management Conference. Why did he not seek to tender this agreement or acceptance of liability letter by the second defendant being aware of its existence? My view on this is that, that would have destroyed his case against the first defendant if it was tendered in evidence as an exhibit. By not tendering that letter or agreement into evidence, the first defendants case is enhanced nevertheless when one looks at the other facts of the evidence.

[17] In the absence of any evidence to clearly show that the second defendant was a servant or agent of the first defendant at the material time of the accident, I find and do hold that the first defendant even though technically the owner of PD 272, cannot be held vicariously liable for the accident.

ORDER

[18] In light of the above, I order that this suit be dismissed against the first defendant Elroy Williams; that damages be assessed as against the second defendant Patrick Trimmingham with cost; that the claimant is to pay the first defendants costs in the sum of \$3000.

Frederick V. Bruce-Lyle
High Court Judge