[IN THE PRIVY COUNCIL]

1956 *Present:* **Lord Oaksey, Lord Tucker, Lord Cohen, Lord Keith of Avonholm, and Mr. L. M. D. de Silva**

THE TRUST CO., LTD., Appellant, *and* T. H. I. DE SILVA, Respondent

PRIVY COUNCIL APPEAL NO. 26 OF 1955

S. C. 229—D. C. Colombo, 23,098

Master and servant—Negligent driving of motor car—Retention of control by person other than driver—Responsibility for damage.

A person in control of a motor vehicle—though not actually driving—is liable for the negligence of the driver over whom he has the right to exercise control.

P. was one of three "field officers" employed by the defendant insurance Company. The work of the field officers was to supervise and control the canvassers and to assist them to bring in business to the Company. They were paid a monthly salary and an overriding commission on business introduced through them. It was the duty of any canvasser or field officer bringing in a proposal for life insurance to forward with it a doctor's certificate with regard to the proponent. The doctor's fees were paid by the Company.

One day the plaintiff, who was a doctor, suffered personal injuries by reason of the negligent driving by H., a canvasser, of a motor car in which the plaintiff was a passenger on a journey undertaken from Colombo for the purpose of examining a number of proponents in Jaffna. On the journey there were present in the car four persons, viz., the plaintiff, H., P., and G. who was a paid driver. P., H., and G. took turns in driving the car. At the time of the accident H. was driving and P. was sitting in the back seat. The evidence disclosed that the car had been supplied to P. by the Company under a hire purchase agreement which recited that P. was employed by the Company as a field officer and that under the conditions of his appointment he was obliged to discharge certain obligations and that with a view to helping him discharge these obligations the Company had lent him the money to purchase a car in the name of the Company. It was also accepted by the trial Court that the plaintiff had stipulated with H. that transport should be supplied for the journey and that H. had agreed and arranged with P. for the use of his car.

Held, that P. was a servant of the Company and that in making the journey in the car which had been supplied to him for the purpose of carrying out his duties he was acting in the course of and for the purposes of his employment. Accordingly, although H. was at the wheel of the car at the moment of the accident, the fact that P. was at all times in control of the car and was exercising that control as a servant of the Company on its behalf rendered the Company liable to pay damages to the plaintiff.

APPEAL from a judgment of the Supreme Court reported in *55 N. L. R. 241.*

Neil Lawson, Q.C., with *R. K. Handoo*, for the defendant appellant.

J. N. B 55203—1,500 (6/56)

Sir Frank Soskice, Q.C., with *Phineas Quass, Q.C.*, and *Srimevan Amerasinghe*, for the plaintiff respondent.

Cur. adv. vult.

March 19, 1956. [*Delivered by* LORD TUCKER]—

The respondent (hereinafter referred to as "the plaintiff") suffered personal injuries by reason of the negligent driving by one Holsinghcr of a motor car in which he was a passenger on a journey from Colombo to Jaffna on 27th April, 1950.

The question in the appeal is whether the appellant (hereinafter referred to as "the Company") is responsible for Holsinghcr's negligence.

The plaintiffs' claim failed at the trial in the District Court of Colombo on 8th March, 1951, but this judgment was reversed on appeal by the Supreme Court of Ceylon on 29th October, 1953, when judgment was directed to be entered in his favour for Rs. 50,000 with costs.

The Company transacts insurance business in Ceylon with its principal place of business and registered office in Colombo. Some of its business comes through canvassers who are paid commission on business introduced by them but receive no salary. Holsinghcr was one of these canvassers. The Company employ three "field officers" or "field organisers". Their duties are to supervise and control the canvassers and to assist them to bring in business. They are paid a salary of approximately Rs. 100 a month and an overriding commission on business introduced through them. They are answerable to the secretary of the Company who performs the duties generally carried out by a managing director. Any canvasser or field officer bringing in a proposal for life insurance must forward with it a doctor's certificate with regard to the proponent. It is left to the canvasser or field officer to select the doctor and make the necessary arrangements for medical examinations but the doctors' fees are paid by the Company. Doctors normally provide their own transport. A field officer cannot function efficiently without a car. One of these field officers was named Perera. He was supplied with a car by the Company under a hire purchase agreement dated 30th July, 1948, by which Perera agreed to pay at least Rs. 200 a month towards the full purchase price of Rs. 5,875 plus interest at 6 per cent. On payment in full the car was to become the property of Perera. The agreement recited that Perera was employed by the Company as one of its field officers and that under the conditions of his appointment he was obliged to discharge certain obligations and that with a view to helping him discharge these obligations the Company had lent him the money to purchase a car in the name of the Company.

There was a conflict of evidence at the trial as to the circumstances in which the plaintiff came to be travelling in the car at the time of the accident. Holsinghcr's evidence was to the effect that the plaintiff had borrowed the car for his own exclusive benefit in order to fulfil an undertaking to travel to Jaffna at his own cost and expense for the purpose

of examining a number of proponents for Holsingher. It is implicit in the judgment of the District Judge that he rejected this story and accepted the plaintiff's version which was that he had stipulated that transport should be supplied for the journey from Colombo to Jaffna, a distance of 248 miles. Holsingher agreed and arranged with Perera for the use of his car. On the journey there were present in the car the plaintiff, Holsingher, Perera and a paid driver named Gunapala. Perera, Holsingher and Gunapala took turns in driving the car. At the time of the accident Holsingher was driving and Perera was sitting in the back seat.

The plaint was framed on the basis that Holsingher was an employee of the Company acting within the scope of his employment, but the case was argued on the alternative ground that Holsingher was under the control of Perera who was a servant of the Company acting on its behalf. The Judge dealt with the case on this basis without requiring any amendment of the pleading and no objection has been taken to this course at any stage of the proceedings. He held that Holsingher was not a servant of the Company nor was Perera when driving the car on this journey, and that if the accident had happened while he was driving the Company would not have been liable. Consequently no liability could attach to the Company while Holsingher was driving.

The Supreme Court reversed this judgment on the ground that Perera was a servant of the Company and that at no stage had he divested himself of his character as a servant authorised to act on behalf of the Company. That throughout the journey the car was through Perera's instrumentality being used on the Company's business, and that a contractual obligation binding on the Company had been entered into by Holsingher with the knowledge and approval of Perera to convey the plaintiff to Jaffna and that the car was being used as a means of transport which was clearly incidental to the execution of that which Perera was employed to do.

Their Lordships consider it is clear that Perera was a servant of the Company and that in making this journey in the car which had been supplied to him for the purpose of carrying out his duties he was acting in the course of and for the purposes of his employment. (See *Canadian Pacific Railway Company v. Lockhart*) [1]. Accordingly if the accident had happened while he was actually driving there can be no doubt that the Company would have been liable. Can it escape liability because Holsingher was at the wheel at the moment of accident ? Their Lordships are of opinion that this question must be answered in the negative. It is now well settled that the person in control of a carriage or motor vehicle—though not actually driving—is liable for the negligence of the driver over whom he has the right to exercise control. (See *Wheatley v. Patrick* [2], *Samson v. Aitchison*[3] and *Reichardt v. Shara* [4]). Perera was at all times in control of this car. He was exercising that control as a servant of the Company on its behalf. Any consequential liability attaching to him is a liability of the Company.

[1] [1942] *A.C. 591.*
[2] *2 M. & W. 650.*
[3] [1912] *A.C. 844.*
[4] *(1914) 31 T.L.R. 24.*

Their Lordships do not consider it is necessary for the decision of this case to express any view on the question which was much canvassed at the Bar as to whether Perera had authority to delegate the driving of the car to Holsinghcr so as to create a direct relationship of master and servant or principal and agent between Holsinghcr and the Company, nor do they base their decision on the view that the Company was contractually bound to provide transport for the plaintiff on this journey.

For the reasons indicated above their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant Company must pay the respondent's costs of the appeal.

Appeal dismissed.