

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 of 1989

BETWEEN:

ROOSEVELT NICHOLLS

Appellant

and

COLIN TUTT

Respondent

Before: The Honourable Chief Justice Floissac - President  
The Honourable Miss Justice M. Joseph J.A.(Ag.)  
The Honourable Mr. Justice A.Matthew J.A. (Ag.)

Appearances: Mrs. Claudette Jenkins, Dr.Henry Browne with her for  
the Appellant  
Mrs. Lillian Benjamin-Matthew for the Respondent

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1992: March 26th and 27th.  
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J U D G M E N T

FLOISSAC, C.J.

On the 1st April 1987, the appellant engaged a mechanic to instal a new water-pump in the appellant's motor-car. After installing the pump, the mechanic drove the car in order to test it. He drove the car so negligently that it collided with and damaged the respondent's vehicle and injured the respondent. Whereupon the respondent sued the appellant for the negligence of the mechanic.

Williams J. found that the appellant had instructed and authorised the mechanic to drive the car and that at the time of the accident, the mechanic was the agent of the appellant. The learned Judge held the appellant vicariously liable for the mechanic's negligence and by judgment dated 1st July 1989 ordered that the appellant do pay the respondent special damages in the sum of \$16,802.00, general damages in the sum of \$4,000.00 and costs to be agreed or taxed.

The issue in this appeal against that judgment is whether the learned Judge erred in law or in fact in holding the appellant

vicariously liable for the mechanic's negligence in the circumstances of this case.

In **Morgans v Launchbury** (1972) 2 A.E.R. 606 at 609, Lord Wilberforce said:

"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".

Lord Pearson said at pp. 613 and 614:-

"My 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**, **Ormrod v Crosville Motor Services Ltd**, **Hilton v Thomas Burton (Rhodes) Ltd**, **Norton v Canadian Pacific Steamships Ltd** and **Klein v Caluori**. 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 Salmon said at p.620:-

"As I understand the authorities the law at present makes the owner or bailee of a car vicariously responsible for the negligence of the person driving it, if, but only if, that person is (a) his servant and driving the car in the course of his employment or (b) his authorised agent driving the car for and on his behalf: **Hewitt v Bonvin**. Thus, mere permission to drive is not enough to create vicarious responsibility for negligence".

**Morgans v. Launchbury** is therefore authority for the proposition that where a person negligently drove a vehicle which did not belong to him, the driver should be held to have driven as agent of the owner and the owner should be held to be vicariously liable for the driver's negligence if (i) the owner had requested, instructed or authorised the driver to drive for the purpose of performing a task or duty for or on behalf of the owner or partly for the owner's purposes and (ii) at the time of driving, the driver was acting in performance of the said task or duty or in pursuit of the said purposes.

In **Rambarran v Gurrucharran** (1970) 1 A.E.R. 749, Lord Donovan (delivering the opinion of the Privy Council) said at p. 751:

"Where no more is known of the facts, therefore, than that at the time of an accident the car was owned but not driven by A it can be said that A's ownership affords some evidence that it was being driven by his servant or agent. But when the facts bearing on the question of service or agency are known, or sufficiently known, then clearly the problem must be decided on the totality of the evidence".

In this case, the facts bearing on the questions of agency and purpose are known or sufficiently known. Under examination-in-chief at the trial, the appellant said:

"To know if the pump was working I would start the engine and see if the water from the radiator was leaking, then I would know if a new pump was installed."

In reply to a question from the learned trial Judge, the appellant said:

"It is not reasonable to expect a mechanic to take the vehicle to test it after putting in a water-pump. It is not necessary".

Therefore, by the appellant's own admission, it was not necessary for the mechanic to drive the car in order to ascertain whether the pump was properly installed. Had such necessity been established, it would have been evidence that the driver drove the car in performance of his own task or duty or in pursuit of his own purposes. But there was no evidence of such necessity. Nor was there evidence of any fact from which such necessity could properly be inferred in defiance of the appellant's positive denial of such necessity.

Having seen and heard the witnesses, the learned Judge concluded as follows:-

"In my judgment the first-named defendant (the appellant) authorised, requested and directed Algie Maynard (the mechanic) to instal the water-pump, and to test the vehicle after he had done so to see if it was in proper working order, that Algie Maynard acted accordingly and that it was while he was carrying out those instructions that the accident occurred; and I so find."

This was a finding of fact that the appellant authorised the mechanic to drive the car for the purposes of the appellant and

that the negligence was committed in pursuit of those purposes.

Since it was established that the purpose or object sought to be attained by the driving was the appellant's and not the mechanic's purpose or object, the learned Judge was justified in holding the appellant vicariously liable for the mechanic's negligence.

The appeal must therefore be dismissed with costs to the respondent.

(Sgd.) V.F.FLOISSAC  
Chief Justice

(Sgd.) M. JOSEPH  
Justice of Appeal (Ag.)

(Sgd.) A.N.J.MATTHEW  
Justice of Appeal (Ag.)