

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2012/0637

BETWEEN:

TAMEIKAH HUGHES

Claimant

and

CISERON ALPHONSO MARTIN MAHESTRE
TIRSO BAPTISTA RODRIGUES

Defendants

Appearances:

Mrs. Andrea Roberts-Nicholas for the Claimant

Mrs. Cherissa Roberts-Thomas for the Second Defendant

2014: February 24

Oral Judgment

- [1] **Cottle, J.:** The Claimant was involved in a motor vehicle collision with a vehicle owned by the Second Defendant and driven by the First Defendant. The First Defendant was a visitor to Antigua. He was not served with the claim form and took no part in the trial. The evidence reveals that he was originally prosecuted and pleaded guilty to charges of dangerous driving in relation to the accident. The Second Defendant offered no evidence as to how the accident occurred. In the circumstances of this case, I am content that the accident was entirely due to the negligent driving of the First Defendant. The issue which now falls for determination is whether the Second Defendant should bear any responsibility vicariously.

- [2] Counsel for the Second Defendant submitted that there is no evidence that the first Defendant was the servant or agent of the second Defendant. The second Defendant did not know him. The second defendant had agreed with another gentleman, Junior, for the loan of the vehicle to him. Defendant two says that unbeknownst to him, this other person allowed Defendant one to drive. In these circumstances he had no interest in the purpose for which his vehicle was being driven and is not vicariously liable, for any damages caused by Defendant's one's negligent driving.
- [3] Motor vehicles can cause substantial damage and loss. For this reason the legislature forbids their use without insurance cover. It is the responsibility of the owner of a vehicle not to permit its use without the required cover.
- [4] On the facts of this case there can be no suggestion that the First Defendant was the servant or employee of the Second Defendant. The accident did not occur during the course of his employment.
- [5] The Second Defendant concedes that he permitted Junior to use his vehicle and to that end he included his name on the policy of insurance as a named driver. Yet there remains a prima facie presumption that the First Defendant was driving as the agent of the Second Defendant. He was using the Second Defendant's vehicle. He remained in Antigua for some time after the accident. It was not suggested to the police that the Second Defendant had stolen or unlawfully obtained the use the First Defendant's vehicle.
- [6] The circumstances of just how the First Defendant came to be driving the Second Defendant's vehicle are peculiarly within the knowledge of the Second Defendant. In his pleadings, he simply says that the First Defendant was on a journey of his own without the knowledge or consent of the Second Defendant. No supporting evidence in support of this allegation has been led. Merely to say he did not know the First Defendant is not enough. Here the Second Defendant benefitted from a commercial agreement where under he parted company with his vehicle for reward. It was his duty to ensure that his vehicle was used properly while not in his possession. I find it particularly telling that he took no steps to indemnify himself from responsibility by moving either against Junior or the Second Defendant.

[7] Public policy demands that users of the road be protected from losses due to vehicular accidents. This is why insurance is mandatory. It would make a mockery of the requirements to permit owners to escape liability for damage caused by vehicles which they deliberately allow to be used by others on the basis that these drivers are about their own business. I find that the Second Defendant was interested in the sense that he benefitted from the repair of his vehicle by Junior. He must bear the burden of loss caused by those to whom he permitted his vehicle to be used and those to whom his agent allowed to drive.

[8] I find the Second Defendant to be vicariously liable in this matter. I will permit both counsel to file written submissions as to the quantum of damages and the matter will be fixed for hearing to consider those arguments unless there is agreement between the parties in this regard.

Brian Cottle
High Court Judge