Judgment 6, 1970

IN THE PRIVY COUNCIL No. 2 of 1969

ON APPEAL

FROM THE COURT OF APPEAL OF GUYANA

BETWEEN :-

HARRY RAMBARRAN — Appellant

- and -

GURRUCHARRAN — Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment of the Court of Appeal, Guyana (Stoby, Ch. and Persaud J.A., Cummings J.A. dissenting) dated the 6th May, 1968, which had allowed the Respondents appeal from a judgment of the High Court of Guyana (George J.) dated the 2nd May, 1967, which had dismissed an action by the Respondent for damages arising out of a motor car collision. pp.57-58 p. 27

2. The Respondent, in his Statement of Claim dated the 22nd August, 1966, had alleged that on the 14th November, 1965, his motor car number PN 904 had been badly damaged by being run into from behind by motor car number PL 799 owned by the Appellant which was being negligently driven by the Appellant, his servant or his agent; and that he, the Respondent, claimed a total of $10.000 damages for negligence. pp. 3-6

3. The Defence, dated the 29th September, 1966, admitted the ownership alleged of the two cars and that there had been a collision; it denied the negligence alleged, and further alleged that the collision had been solely caused by the Respondent's negligence; it was

RECORD

also alleged that the Statement of Claim disclosed no cause of action.

pp. 8-20

4. The trial took place on 3 days between 18th February and 24th April, 1967 in the High Court of Guyana before George, Ag.J. A

p. 8

The Respondent's counsel told the Court that the parties agreed that the driver of car PL 799 was permitted and authorised by the Appellant to drive the car at the time of the

pp. 61-62

accident. A certificate of registration of the B car in the name of the Appellant was admitted in evidence. The Respondent then gave

pp. 8-11

evidence, in which he said that on the 14th November, 1965 he had been driving north along the road from Atkinson Field to Grove, and at C Coverden he had passed the Appellant's car parked on the side of the road. Two miles further on he had been travelling on a straight part of the road at about 30 m.p.h. when he was violently struck from behind by the D Appellant's car. His car was severely damaged and came to rest some 80 feet further on. The Appellant's car went off the road on the off-side and struck a tree some 500 feet further on. About 5 men and a woman got out and pushed E the car back onto the road, and it then drove on north towards Georgetown. The Respondent had waited until the police came, and estimated his total damage at $3,026.80. P.C. Leacock said that he had gone to the scene and F corroborated the Respondent's evidence; the next day he had inspected the Appellant's car, which was damaged to the front and nearside.

5. The Appellant gave evidence in his defence. He said that he did not drive, but his children G used his car at any time they liked. On the day in question he had been at his farm at Soesdyke, but had left his car at another house at Meadow Bank; he did not know where the car was that day, and knew nothing of the accident. In H cross-examination, he said that his three grown-up sons who lived at Meadow Bank, drove the car regularly, of whom one was in charge of the Appellant's sloop trading with Trinidad,

RECORD

and the other two worked on his farm. He first knew of the accident on 21st November, when his wife told him that his son Leslie had been driving the car; this was confirmed by Leslie. He, The Appellant, had been at the farm on 14th November with some members of his family, but his car had not been there.

6. Judgment was given by George Ag.J. on 2nd May, 1967. He reviewed the evidence given at the trial, and said that he accepted the evidence given both by the Respondent and by the Appellant. It was clear that the damage caused to the Respondent's car was wholly due to the negligence of whoever was driving the Appellant's car, but the question in issue was whether that driver, which he accepted was not the Appellant himself, was at the time of the accident the servant or agent of the Appellant so as to fix him with liability for the negligent act. pp. 20-27

It was well established that the proof of ownership of a car was some evidence that it was being driven by the owner or his servant or agent; he had already held that he did not believe that the Appellant was at the material time the driver of the car; he then reviewed the Appellant's evidence as to the use made of the car by his sons; there was no evidence that on the day in question his sons or anyone else had implied authority to do or transact any business on his behalf. The learned judge held that there was not enough evidence on the whole of the case from which he could properly say that the driver of the car at the material time was acting as the Appellant's agent; nor could he come to the conclusion that the driver was a servant ad hoc or otherwise of the Appellant. The action would therefore be dismissed with costs. The damages suffered by the Respondent were assessed at $3,026.80.

7. The Respondent appealed against this judgment to the Court of Appeal (Stoby Ch., Persaud and Cummings JJ.A.) which, by judgments dated the 6th May, 1968, allowed the pp. 33-57

RECORD
pp. 57,58

appeal by a majority, and entered judgment for the Respondent.

pp. 33-37

8. Stoby, Ch., said in his judgment that he agreed with the judgment of Persaud J.A.; the law was that an owner of a vehicle was liable for the negligence of its driver, if the driver was his servant or if the driver has his authority to drive. The creation of the authority was of importance; if the Appellant's son Leslie was driving as the result of a general authority given by the Appellant whereby the son could drive anytime on his behalf, then the Appellant was liable. The Respondent had proved the ownership of the car, which prime facie proved responsibility for the driver's negligence; after considering the evidence, the learned judge held that the Appellant had not rebutted the prime facie case of agency.

pp. 37

9. Persaud J.A., in his judgment, said that during the proceedings the Appellant had admitted that he had permitted and authorised the driver of his car to drive at the time of the collision; he had further admitted that his son Leslie had admitted to him being the driver at the material time, his sons had driven the car regularly, and in connection with his business; the question to be determined was whether, from the evidence, it could be said that the Appellant's son was his father's agent at the time of the accident. The learned judge then reviewed the relevant authorities; proof of ownership established responsibility prima facie for the negligence of the driver, whereupon the onus was shifted to the owner of the vehicle to lead evidence relating to the particular journey; if the owner refrained from adducing evidence of the actual facts, then the onus has not been discharged. In the present case, the Appellant had given no evidence of the events of the material day, although he must have had that evidence available; the evidence given showed that whenever the car was used for the Appellant's purposes, it was driven by one of his sons; on the day in question one of his sons was driving; it could be said that the son was acting as the unpaid

chauffeur of the Appellant, whose authority had not been disproved. The Respondent was entitled to judgment for $3,026.80 and costs in both courts. RECORD

A 10. Cummings J.A., in his judgment, reviewed the proceedings before the trial judge and the evidence given by the Appellant, in the light of the relevant English authorities as he understood them. The trial judge had correctly B applied the principles as to onus of proof; there had been sufficient information before the court to justify his conclusions. There was no rule of law that the onus, in the circumstances of this case, was upon the C Appellant to say in evidence that his son had not at the material time been acting as his servant or agent. It had been open to the Respondent to cross-examine the Appellant or to add the son Leslie as a Defendant in the D action. The question was one of fact in each case; here, there was no reason for disturbing the trial judge's conclusions, and the appeal should be dismissed. pp.49-57

11. The Respondent respectfully submits that E the decision of the Court of Appeal was correct and should be upheld. The question at issue depends upon the correct view taken of the onus of proof upon the issue of whether the driver of the vehicle involved in the collision F was driving on that occasion as the servant or agent of the Appellant. It is submitted that Stoby Ch. and Persaud J.A., were correct in holding that it was for the Appellant to show what the true facts were, once it had G been established that he was the owner of the vehicle. A prima facie case had been raised by the Respondent that the driver of the vehicle was the agent of the Appellant, and the evidence called by the Appellant did not H rebut that prima facie case. In the present case, facts which would establish or negative agency were readily available to the Appellant, but his failure to adduce them in evidence led to the correct conclusion that he had failed I to discharge the burden of proof upon that

RECORD

issue which, at the relevant stage in the case, lay upon him.

12. It is therefore respectfully submitted that this appeal should be dismissed with costs and that the judgment and order of the Court of Appeal, Guyana should be affirmed for the following, among other

A

R E A S O N S

(1) BECAUSE the Respondent sufficiently proved that the car which collided with his own was being driven by a servant or agent of the Appellant.

B

(2) BECAUSE the onus of proof was upon the Appellant to show whether or not the driver of his car was acting as his servant or agent.

C

(3) BECAUSE the Appellant failed to establish that the driver of his car was not his servant or agent.

(4) BECAUSE the driver of the Appellant's car was driving as his servant or agent.

D

(5) BECAUSE of the other reasons given in the majority judgments of the Court of Appeal.

MERVYN HEALD

No. 2 of 1969

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF GUYANA

B E T W E E N :-

HARRY RAMBARRAN — Appellant

- and -

GURRUCHARRAN — Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
Hale Court,
21, Old Buildings,
Lincoln's Inn,
LONDON, W.C.2.