2 OF 1969

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

B E T W E E N:

HARRY RAMBARRAN, male of age,

(Plaintiff) Appellant

-and-

GURRUCHARRAN, male of age,

(Defendant) Respondent.

RECORD OF PROCEEDINGS

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(Defendant) Respondent

RECORD OF PROCEEDINGS

NO. 1

SPECIALLY INDORSED WRIT.

In the High Court of the Supreme Court of Judicature

No. 1

Specially Indorsed Writ 4th July, 1966.

1966 No. 1465 DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

B E T W E E N:-

GURRUCHARRAN, male of age,

Plaintiff,

-and-

HARRY RAMBARRAN, male of age,

Defendant.

ELIZABETH THE SECOND, BY THE GRACE OF GOD, QUEEN OF GUYANA AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH.

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In the High Court of the Supreme Court of Judicature

No. 1

Specially Indorsed Writ 4th July, 1966

TO:- Harry Rambarran,
Meadow Bank,
East Bank Demerara.

WE COMMAND YOU, that within 10 (ten) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of the abovenamed Plaintiff, Gurrucharran,

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS the Honourable Sir Kenneth Sievewright Stoby, Knight Bachelor, Chancellor of Guyana, the 4th day of July, in the year of Our Lord, one thousand nine hundred and sixty-six.

N.B. The defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registry at Georgetown.

INDORSEMENT OF CLAIM.

1. On the 14th day of November, 1965, the defendant by his servant and/or agent drove his motor car PL 799 so carelessly and/or negligently that the same came into violent contact with the Plaintiff's car No. PN 904 at Coverden Public Road, East Bank, Demerara, Guyana, and caused the same to be so badly damaged as to be of no use to the plaintiff. The plaintiff also incurred damages as a result of being deprived of the use of his said car.

2. The Plaintiff therefore claims the sum of $10,000.00 as damages in respect thereof from the defendant.

3. The Plaintiff also claims costs.

Evelyn A. Luckhoo
Solicitor for the Plaintiff.

Dated this 4th day of July, 1966.

This Writ was issued by Evelyn Ada Luckhoo, of and whose address for service and place of business is at the Office of Luckhoo and Luckhoo, Legal Practitioners, of 2, Croal Street, Georgetown, Demerara, Solicitor for the Plaintiff herein who resides at Grove, East Bank, Demerara.

Evelyn A. Luckhoo
Solicitor for the Plaintiff.

Dated this 4th day of July, 1966.

In the High Court of the Supreme Court of Judicature

No. 1

Specially Indorsed Writ 4th July, 1966 (Contd.)

NO. 2

STATEMENT OF CLAIM

In the High Court of the Supreme Court of Judicature

No. 2

Statement of Claim - 22nd August 1966.

1. The Plaintiff is a technical draughtsman employed by Demerara Company Limited and resides at Grove, East Bank, Demerara, in the State of Guyana and was at all material times the owner of motor car PN 904.

2. The defendant resides at Meadow Bank, East Bank, Demerara, in the State of Guyana, and was at all material times the owner of motor car PL 799.

3. On the 14th day of November, 1965, the Plaintiff's motor car PN 904 was badly damaged and/or wrecked as a result of the defendant's motor car

In the High Court of the Supreme Court of Judicature

No. 2

Statement of Claim 22nd August, 1966 (Contd.).

PL 799 colliding with the same in the vicinity of Coverden Public Road, on the East Bank of the County of Demerara and State of Guyana, when the defendant's said car was being carelessly and/or negligently driven by the defendant his servant and/or agent.

PARTICULARS OF NEGLIGENCE.

(a) The Plaintiff was driving his motor car PN 904 in a northerly direction along the East Bank Public Road on its proper side of the road, namely the left or western side of the Road at a normal rate of speed. The Defendant's said motor car PL 799 which was travelling in the same direction came up from behind at a very fast rate of speed and struck the plaintiff's car violently, pushing the same forward and causing it to be severely damaged.

(b) The Defendant's said car was at the time being driven at a very fast rate of speed and after striking the Plaintiff's car as aforesaid left the road and travelled in a westerly direction on the grass parapet and then continued in a northerly direction knocking down several trees and bushes and ended up 500 feet from the point of impact.

(c) The Defendant, his servant and/or agent in driving the said car caused the accident by failing to p roperly control and/or manage the same and never had any regard or sufficient regard for the safety of other users of the said road whereby the said collision.

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(d) The Defendant, his servant and/or agent in so driving the said car failed to keep any look out or any proper look out for other vehicles on the said road thereby causing the said collision.

(e) The Defendant, his servant and/or agent in driving the said car failed to give any warning or any proper warning of his approach.

(f) The Defendant's said car was being driven at such an excessive rate of speed that it could not be properly controlled and as a result crashed into the rear of the Plaintiff's car.

(g) The Defendant, his servant and/or agent drove the said car without due care and attention and without due consideration for users of the said public road.

4. The Plaintiff's employment requires him to travel to various parts of the country for the purpose of inspecting various Sugar Estates and Enterprises in which his employers are interested and as a result of the damage to his said car he lost the use thereof and suffered damages.

PARTICULARS OF DAMAGES.

The Plaintiff as a result of the said accident was forced to purchase another car to do his work at a cost of	$1,200.00
To damage caused to Plaintiff's car by aforesaid collision	3,000.00
General damages	5,800.00
	$10,000.00

In the High Court of the Supreme Court of Judicature

No. 2

Statement of Claim 22nd August 1966 (Contd.)

5. The Plaintiff therefore claims from the defendant the sum of $10,000 as damages for the loss and use of his said car PN 904 since the 14th day of November, 1965, as a result of the collision with the defendant's car PL 799, which was carelessly and/or negligently driven by the defendant, his servant and/or agent on the East Bank Public Road, in the County of Demerara and State of Guyana, aforesaid.

6. The plaintiff also claims costs.

Evelyn A. Luckhoo
Solicitor for the Plaintiff.

C. Lloyd Luckhoo
OF COUNSEL.

Dated at Georgetown, Demerara, this 22nd day of August, 1966.

No. 3

D E F E N C E

In the High Court of the Supreme Court of Judicature

No. 3

Defence - 29th September, 1966.

1. The defendant admits paragraphs 1 and 2 of the Statement of Claim.

2. The defendant denies paragraph 3 of the Statement of Claim save and except that his car collided with the plaintiff's car.

3. The Particulars of Negligence set out in paragraph 3 (a) to (g) inclusive are denied.

4. The defendant says that the said collision was caused solely as a result of the plaintiff's own negligence in stopping his car in front of the defendant's car without giving any warning.

5. The defendant denies paragraph 4 of the Statement of Claim including the Particulars of Damage set out thereunder, and says that the damage to the plaintiff's vehicle did not exceed $100.00.

6. The defendant will contend at the trial of this action that the Statement of Claim discloses no cause of action against him and that this action ought to be dismissed.

7. Save as hereinbefore expressly admitted the defendant denies each and every allegation contained in the plaintiff's claim as if the same were set out verbatim and traversed seriatim.

J.A. Jorge
Solicitor for Defendant.

Georgetown, Demerara,
29th September, 1966.

NO. 4 - NOTES OF TRIAL JUDGE

In the High Court of the Supreme Court of Judicature.

No. 4

Notes of Trial Judge - 18th February, 1967.

Court opened.

Mr. C.L. Luckhoo (instructed by Miss Luckhoo) for Plaintiff.

Mr. M.H. Khan (instructed by Mr. Jorge) for Defendant.

MR. LUCKHOO addresses:-

Informs court that the defendant admits that the driver of motor car PL 799 was permitted and authorised by the Defendant to drive the car at the time of the accident.

Mr. Khan confirms this.

By consent Certificate of Registration tendered, admitted and marked Exhibit "A".

GURRUCHARRAN Sworn States:-

I am the Plaintiff and reside at Grove, East Bank, Demerara. I am the owner of motor car PN 904. On 14/11/65 this motor car was 2 years 9 months old. It was a Vauxhall Victor and I had purchased it for $4,200. It had completed about 9.000 miles and on the day of the accident I valued it at $3,500. It was in very good condition. I alone had driven it before the accident. On the 14/11/65 I was travelling north from Atkinson Field to Grove. When I got to Coverden I passed motor car PL 799 parked on the western side of the road. I saw a group of men near to the north with bottles in their hands. I passed the vehicle and drove on for about 2 miles. Suddenly I felt an impact from behind my car. I was at that time travelling about 28 to 30 miles per hour and on the western side of the road which is asphalted.

The road was quite clear and straight. I was not slowing down or stopping at the time. I had no cause for so doing. My next stop was to be my home. The impact was heavy. It pushed my car faster than it was travelling. The car travelled for about 80 feet before I could bring it to a standstill on the west half of the road. I alone was in the car. I saw motor car PL 799, a green Rambler which was a big car, travel about 200 feet on the western parapet of the road brush past an electric wire post then continued along the parapet for another 200 feet, struck down two small jamoon trees and its course was stopped by a large jamoon tree which was 30 feet from the western edge of the road. Motor car PL 799 caused the impact. It was after the impact that this car immediately passed and commenced driving on the parapet. There were no vehicles or other things on the road which could have caused the accident. After PL 799 was stopped I was a woman and about five men come out of it. About a minute after, two lorry loads of men, who appeared to be soldiers, came up. They were travelling south. One of the lorries was apparently driven by a police constable. The constable spoke to the occupants of PL 799 and then came to me and we spoke. I could not hear what conversation he had with the occupants of PL 799. I did not move my car. Immediately as the lorries drove away the occupants of PL 799 pulled out the car from the jamoon tree, they turned it east and drove on the public road and then north towards Georgetown. When PL 799 was against the jamoon tree it was facing north. I waited for an hour for a police constable. Two came. I spoke to them. I showed them the point of impact. At that spot there was broken glass from my tail lamp. The rear portion of my car was twisted, the trunk, right fender and bumper bashed in and the right rear wheel hubcap was destroyed and I found

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 18th February, 1967 (Contd.).

it about 300 feet north west of my car and near to the point where PL 799 came to a stop. I had my car towed because it did not move when I started it. I paid $10.00. I had the car examined by one Angoy an Engineer. The car is at present under my house. It has not been repaired. I value it at $500.00. I am a technical draughtsman at the Demerara Company's Office, Georgetown. I bought a second-hand car about two weeks after for $800.00. I paid $300.00 to repair it. I bought it for the purpose of getting to and from work. For the two weeks I hired a car at $1.20 per day. Constable Leacock (called and identified) is the Police Constable who took the measurements. A Constable Armstrong assisted him. The accident took place at Coverden, East Bank, Demerara. I am claiming damages in excess of $500.00.

Cross-examination:-

Declined.

BERTRAM LEACOCK Sworn States:-

I am P.C. 6493. On 14/11/65 I was stationed at Atkinson Field Police Station. I received a report of an accident. As a result I went to the Coverden Public Road. I saw the plaintiff and motor car No. PN 904. It was on the road facing north. The plaintiff showed a point of impact and I took measurements which I recorded in the Accident Report Book. I ask leave to refresh my memory (leave granted). The width of the road at point of impact 25 feet 7 inches. From point of impact to western edge of road 11 feet. From point of impact north to where PN 904 was found, 59 feet. From point of impact to a jamoon tree pointed out by the plaintiff 530 feet.

I saw fresh bruise marks on the jamoon tree. From the jamoon tree to the western edge of the road 30 feet. The width of PN 904, 5 feet; length 14 feet. I did find a damaged hubcap. I cannot remember its exact position. I inspected PN 904 and I noted the following damage to the vehicle; the right rear fender smashed, rear bumper bent, the right rear lamp smashed. The right rear hub cap bent. The following day I saw motor car PL 799. The defendant (identified) is the owner. I saw the car at Sandbach Parker's workshop and I inspected the car. I saw the following damage. The left front fender, the grill and front bumper bent. The left front door and the left running board and the bonnet bent. I had a conversation with the defendant's son the next day. He did not give me any statement in writing.

Cross-examination:-

Declined.

Mr. Luckhoo asks for amendments of particulars of damages to read:-

Towing	.....	$10.00
Loss of use	...	16.80

Mr. Khan offers no objection.

By consent copy of letter of demand, tendered, admitted and marked Exhibit "B".

CASE FOR PLAINTIFF.

D E F E N C E.

HARRY RAMBARRAN Sworn States:-

I am the defendant. I live at 24 Meadow Bank, East Bank, Demerara.

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 18th February, 1967 (Contd.).

I own PL 799. I am not a driver. My children use the car. They can use it at any time. On the 14/11/65 I was at my farm at Soesdyke. I spent about three weeks at my farm from about the 1st to 21st November, 1965. I left my car at home. I did not use it on the 14/11/65. I did not know where it was on that day. I heard about the accident in which the car was involved afterwards.

Cross-examined by Mr. Luckhoo:-

I have never had a licence to drive. PL 799 is the first car which I have owned. I bought it in 1961. It was a new car. I did not employ a regularly paid chauffeur. If my sons were not available to drive I may pay someone to drive for an occasion i.e. if I want to come down to Georgetown. Usually my sons drive the car. They drive it regularly. I had no objection to my sons using the car at any time. The car was for the use of my family. I have a wife and twelve children. Three of my children were licensed drivers in 1965. They were Dennis aged 24, Leslie aged 22, Winston aged 20 years. In November, 1965 all the children lived in my home at Meadow Bank. None were married at that time. Dennis works with me. He is in charge of a sloop owned by me. The farm at Soesdyke is a chicken farm. My sons and I look after it. I have nine sons. When I am not at the farm one of my sons goes. He would live there. I also live at the chicken farm. Two of my sons Winston and Rudolph are the only two sons who work at the farm with me. I do not know what happened on the 14th November.

I first knew that the car was involved in an accident when I first went back to Meadow Bank on the 21st November, 1965. My wife told me. I was told the 14/11/65. My wife told me Leslie was driving. I did enquire from Leslie who admitted that he was driving the car on the 14/11/65. Atkinson Field is a few miles south of Soesdyke. Meadow Bank is north of Soesdyke. My chicken farm is about 1½ miles from the public road. There is a road leading to the farm. A car cannot travel on this road. I use a land rover to go to the farm. If I use my car it must be left on the public road.

Adjourned to 1st April, 1967.

SATURDAY 1st APRIL, 1967.

HARRY RAMBARRAN Sworn:- (Further states) (in cross-exam-) (ination.) 1st April, 1967.

My main household was at Meadow Bank. My car PL 799 was bought for the benefit of the household. It was also used in the course of my business i.e. if I had to come to Georgetown to transact any business. The car has brought me from the chicken farm sometimes. Besides the chicken farm and my sloop I had no other business activities. I rear and sell chickens from the farm. My average stock of chickens is about $6,000. I only sell plucked chickens. They are sold in Georgetown and brought by the landrover. The landrover is driven by a paid chauffeur. It is sometimes driven by my sons Winston and Dennis when bringing chickens to Georgetown. The number of the landrover is PN 157. My son Leslie, to my knowledge, has never driven the landrover. The landrover was mostly kept at Meadow Bank.

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 1st April, 1967.

The name of my sloop is "Alvin R 2". This is the boat I owned at the time of the accident. It traded between Guyana and Trinidad and still operates on this run. I know nothing about the operation or management of the sloop. My eldest son has full charge of this. He brings the profits to me. I do not ask him for an account. My son Dennis pays for any repairs to the sloop. He sometimes comes to see me at the farm on his returns from Trinidad. My sloop did not arrive from Trinidad on the morning of the accident. It was in Guyana before the 14/11/65. I do not know that it arrived in Port Georgetown on the 14th November, 1965. Some one of the boys (my sons) told me it was in Guyana before 14/11/65. I was told this before the 14/11/65. I was told this about two days before the 14/11/65. If the boat arrived in Georgetown on 14/11/65 and my son Dennis had felt inclined to do so he would have come to the farm. So far as I am aware the sloop did not arrive in Georgetown on the 14/11/65. My son Alvin is a member of the crew. On the 14/11/65 my landrover was at the chicken farm. I do not know whether Dennis has ever gone up to the farm in motor car PL 799. I am certain I did not see Dennis or Alvin on the 14/11/65. I saw Dennis or Alvin about one month after the 14/11/65. When I am at the farm my wife and family would come up at week-ends either Saturday or Sunday. They would sometimes overnight at the farm. They do not give any assistance. On both Saturday 13/11/65 and Sunday 14/11/65 the land-rover was at the farm. On Friday 12/11/65 only I and my workmen were at the farm. Winston and Rudolph were not on the farm on the 12/11/65. On Saturday 13/11/65 my wife and Winston and four of my children aged 3 to 10 years were at the farm.

Winston drove the landrover to the farm with my wife and children. Rudolph was at home at Meadow Bank. I don't know where Dennis was. Leslie was supposed to be at Meadow Bank. My wife, Winston and the four children spent the night at the farm. They returned to Meadow Bank about 4 to 4.30 p.m. on 14/11/65. Winston drove them back. He used the landrover. No other member of my family arrived on the farm on 14/11/65. I know Jaundoo's sawmill. It is situate at Soesdyke. There is no Janudoo's sawmill at Coverden. Jaundoo's sawmill is about 25 rods from the road leading to my farm. Coverden is the village immediately north of Soesdyke. As far as I am aware the car is never used to convey any persons other than me to the road leading to the farm. I knew my car had been involved in an accident about two weeks after the 14/11/65 when I came home to Meadow Bank. This was about the 28/11/65. I had spent about one month on the farm before this date. I was annoyed at the delay in notifying me about the accident.

By consent witness told to leave Court in charge of Marshal so as to afford Mr. Luckhoo an opportunity to show the relevance of questions about to be put to witness concerning an Insurance Policy on the car PL 799 and witness' report of the accident to the Insurance Company.

Mr. Khan offers no objection to the questions being put.

Leave granted.

HARRY RAMBARRAN Sworn:- (Further states) (in cross-exam-) (ination.)

I did have a Policy with the Guyana

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 1st April, 1967.

and Trinidad Mutual Insurance Company Limited on the 14/11/65. It was for a Third Party Policy. I heard that a report of the accident was made to the company. I did not personally make a report. I caused an accident report form to be filled in for submission to the company. I signed the form. It was left with Mr. J.A. Jorge, Solicitor, to be sent to the company. Mr. Jorge told me he sent in the form. I first spoke to my son Leslie about the accident after I returned to Meadow Bank. During the 14th to 28th November, no members of my family visited me. Leslie is not now living with me. He lives at Mc Doom Village. I paid for the repairs to PL 799. It cost me about $700 to $800. I received the original of Exhibit "B". I passed it to my Solicitor. I did not reply to it personally. The car PL 799 is my property. My sons drove it with my approval.

Re-examination:-

Declined.

CASE FOR DEFENDANT.

Adjourned to 24/4/67 at 2 p.m.

Mr. C.L. Luckhoo for plaintiff.

Mr. Kissoon for Mr. Khan instructed by Mr. Jorge for defendant.

24th April, 1967.

MR. KISSOON addresses:-

Issue is whether the defendant was the driver of the car or whether whoever was driving was doing so as the servant or agent of the defendant. Defendant cannot drive and did not drive the car. Defendant never authorised driver to do anything for him, or on his behalf.

Even if he was permitted to use car for his (driver's) own purposes the defendant not liable. Refers to Hopkinson v. Lall 1 W.I.R. (1958 - 1959) page 382. No evidence that driver has been acting on defendant's behalf. Presumption has been rebutted specifically by defendant who said he did not authorise the driver to drive on his behalf on the day of the accident. Although driver was permitted to use the car, defendant does not know who were the persons in the car. No inference that a moral or social duty placed on the defendant to authorise driver to take the occupants of the car to any place. The fact that the plaintiff said he saw persons of the car drinking from bottles is circumstances from which court can infer social pleasure and that driver was on a frolic of his own. This is assuming that driver was authorised to do something on behalf of the defendant. There is no evidence on which Court can come to the conclusion that driver was agent or servant of defendant.

Refers to Hewitt v. Bonvin (1939) L.T. Vol. 161.

MR. LUCKHOO:-

Each case must be considered in its own circumstances. Defendant's car kept at his home where he, his wife and twelve children live.

(2) Defendant not licensed to drive and relied on one of his three sons to drive almost exclusively on his behalf. Occasionally defendant would hire a chauffeur.

(3) Car was used for business purposes i.e. in connection with the chicken farm and the sloop business. Circumstances of ownership and use may be consistent with either agency or not.

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 24th April, 1967.

Question of the actual use on the 14/11/65 would be peculiarly within the knowledge of the defendant and members of his family and court would expect to have satisfactory evidence in that respect before the presumption of agency is rebutted. However slight the presumption, it has not been rebutted in this case. Defendant's evidence unsatisfactory, unreliable, and untrustworthy.

Defendant said he became aware of the accident for the first time on 21/11/65 and on the second occasion said two weeks after is 28/11/65. No one he says had visited his farm between 14/11/65 and 28/11/65. This is very strange as defendant's farm was about 1 mile from accident. Demeanour and attitude in box leaves a lot to be desired.

In owner there is a presumption of agency and in the circumstances in which the car was used independently or coupled with ownership a presumption of agency would arise. Assuming there is a presumption, submits that that presumption has not been rebutted.

Defendant said that he had no personal knowledge of the circumstances surrounding the accident or of the use of the car on that day. This can be of no assistance to rebut the presumption because his lack of knowledge cannot provide the material from which any conclusion may be drawn to rebut the presumption. Evidence to rebut the presumption would involve proof of one or all of the following matters.

(1) The identity of the driver.

(2) The purpose for which the car was being used at the time e.g. if car was taking someone to or from the farm in relation with the farm business or the household business. Evidence of this nature may come from one or more of the following persons:-

The wife, children or some other person of the household or from any of the occupants of the car.

Failure to call any one or more of such persons there is no evidence to assist court in determining purpose and use of the car at the time of the accident. The fact that persons in PL 799 had glasses in their hands is of no particular value.

Refers to Halsbury's 3rd Edition Vol. 37, page 135 para. 239.

Trial of motor car accident cases by Gibb & Milner 3rd Ed. page 186 sec. 269.

Bingham's Motor Claims Cases 5th Edition, page 111. Owner's liability for driving.

Barnard v. Sully (1931) 47 T.L.R. 557. Driving with consent.

Hewitt v. Bonvin (1940) 1 K.B. page 188.

Adjourned to 1.15 p.m.

1.20 p.m. resumed.

Refers to page 114 of Bingham.

Ferrels Law of Receiving Donor Cases 3rd Edition, Cap. 5, page 139.

Bowsted on Agency 12th Ed. page 227.

Adjourned to 8.45 on 2/5/67.

In the High Court of the Supreme Court of Judicature

No. 4

Notes of Trial Judge - 2nd May, 1967.

Tuesday 2nd May, 1967 at 9 a.m.

Present today:- Mr. C.L. Luckhoo Q.C.
Mr. J. Jorge
Mr. J. Kissoon.

Oral decision delivered. Action dismissed. Judgment for the defendant with costs to be taxed.

K.M. George
Puisne Judge.

NO. 5

J U D G M E N T

In the High Court of the Supreme Court of Judicature

No. 5

Judgment. 2nd May, 1967.

BEFORE: GEORGE, J. (Ag.)

1967: February, 18;
April, 1, 20;
May, 2.

Mr. C.L. Luckhoo Q.C. for Plaintiff.

Mr. M. Hafiz Khan for Defendant.

In this action the plaintiff claims from the defendant the sum of $10,026.00 as damages due to the negligent and/or careless driving of the latter's motor car PL 799 by him, his servant and/or agent on the 14th November, 1965, in the vicinity of Coverden Public Road, East Bank Demerara whereby the said motor PL 799 collided with and badly damaged and/or wrecked the plaintiff's motor car PN 904.

The evidence lead on behalf of the plaintiff is as follows:-

On the 14th November, 1965 he was alone in his car driving north along the East Bank Demerara Public Road in the vicinity of Coverden where he passed motor car PL 799 in a stationary position on the western side of the road. A group of men were near the car with bottles in their hands. He continued driving northwards along the road at the rate of about 28 to 30 miles per hour and when about two miles north of where he passed the stationary car, he felt a severe impact at the back of his car which resulted in pushing it forward at a faster rate of speed than he was travelling. His car travelled about 80 feet before he could bring it to a standstill. Immediately after the impact, motor car PL 799, which is a big car, passed him, travelled about 200 feet on the western parapet brushing past a post holding up electric wires and continued along this parapet for another 200 feet, struck down two small trees in its path and was eventually stopped by colliding with a large jamoon tree about 300 feet from the western edge of the road. After it stopped a woman and five men came out of it.

About one minute afterwards, two lorries carrying men who appeared to be soldiers came up driving northwards and stopped near to motor car PL 799. The driver of one of the lorries came out and spoke to the occupants of the car and the lorries proceeded on their way. Immediately as they left the occupants of motor car PL 799 removed it from the tree and drove away northwards along the public road.

In the High Court of the Supreme Court of Judicature.

No. 5

Judgment 2nd May, 1967.

The road in the vicinity of and at the scene of the accident is quite straight and was clear. There were no other vehicles or things on it; and the plaintiff was travelling a straight course at an even rate of speed. He left his car in the position where it had come to a standstill and after waiting for about one hour, two policemen came up. He spoke to them and showed them the point of impact where there were broken bits of glass from the tail lamp of his car. An examination of the vehicles revealed that the rear portion was twisted, the trunk right rear fender and right bumper were bashed in and the right rear hubcap and lamp destroyed. This hubcap was found about 300 feet northwest of the plaintiff's car in the vicinity where motor car PL 799 came to a standstill. One of the policemen, Constable Leacock, took the following measurements: the width of the road at the point of impact was 25 feet 7 inches; from the point of impact to the western edge of the road, 11 feet; from the point of impact northwards to where the plaintiff's car came to a standstill, 59 feet; and from the point of impact to the jamoon tree, 530 feet. The length of the plaintiff's car is 14 feet and its width 5 feet. The constable saw what appeared to be fresh bruises on the jamoon tree.

The plaintiff's car was later towed to his home where it still is. It has not been repaired. At the time of the accident he valued it about $3,500 and after the accident at $500.00. He paid $10.00 to an engineer to examine the damaged vehicle and was forced to hire a car for two weeks to take him to work in Georgetown. He then purchased another car for $800.00 and paid $300.00 to repair the same.

The day following Constable Leacock went to the workshop of Sandbach Parker and Company Limited where he saw and inspected motor car PL 799. He found the left front fender door and running board as well as the front bumper damaged.

In his defence the defendant who lives at Meadow Bank, East Bank Demerara admits that he was the owner of PL 799 at the material time but states that he is not a licensed driver and cannot and has never driven a motor car. He bought the car in 1961 for the use of his household which comprises of himself and wife and twelve children. Three of his sons are licensed drivers. He further states that his children are permitted to use the car at any time.

On the day of the accident he together with his wife and four of his children, aged 3 to 10 years, were at his chicken farm at Soesdyke about one and one half miles from the public road. A motor car cannot travel along the one and one half mile stretch to his farm and he uses a landrover for this purpose. This landrover took his wife and four children back to Meadow Bank that afternoon. None of his other children came to the farm that day. Coverden he states is situate between Soesdyke and his home at Meadow Bank. He further states that he did know where the car was on the 14th November but was told about one week later that it was involved in an accident and that one of his sons Leslie, a licensed driver, was driving at the time. He admits that he paid for the repairs done to the vehicle as a result of the accident. He further admits that the car has taken him from time to time from his farm to his home and also to Georgetown on business but it is not otherwise used in his business. For this purpose he uses a landrover.

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When he uses the car either one of his sons drives it or he employs an ad hoc chauffeur.

One of his sons, Winston, manages a sloop which he owns and which operates between Georgetown and Trinidad and he sometimes visits him at the farm. As far as he is aware the sloop was at Georgetown on the 14th November, 1965. This son accounts to him for the profits made by the sloop. With regards to the chicken farm he states that he and two of his sons look after it. When he is not there one or either of them is.

I accept and believe the evidence led by the plaintiff as well as that led by the defendant. With regard to the former it is quite clear that it was due wholly to the negligence of the driver of motor car PL 799 that the damage resulted to the plaintiff's car. He is therefore clearly liable for such negligence and I so find. But the burning question is, was the driver, whom I do not accept as being the defendant, at the time of the accident the servant and/or agent of the defendant so as to fix the latter with liability for the negligent act?

It is now well established that the fact of ownership of a motor car is some evidence that at the material time the motor car was being driven by the owner of it or by his servant or agent Barnard -v- Sully (1931) 47 T.L.R. 557 D.C. But, as has been stated by Archer, J. in Hopkinson -v- Lall (1959) L.R.B.G. 175 at page 178, Barnard's case only applies where the court finds that a vehicle was negligently driven and that the defendant was its owner and is left without further information.

As I have already stated I do not believe that the defendant was at the material time the driver of the car. Am I, however, left with no further information? Counsel for the plaintiff has urged upon me that the defendant's evidence is not sufficient to rebut the prima facie evidence based on ownership but the driver was his servant or agent. He further submits that this can only be rebutted if the driver of the vehicle at the material time, or some other person, was called as a witness in order to assist the court in determining the purpose and use of the car at the time of the accident. With respect I do not think the authorities go this far. However, one must examine the defendant's evidence in order to see whether he has given sufficient information of user at the material time. He has given instances when he uses the car. These are to convey him from his farm to his home or to Georgetown in order to transact business, and I daresay, although no evidence has been led in this regard, whenever he desires to use it on some personal mission. The fact that he did not know where the car was or who was using it that Sunday is in my opinion sufficient evidence from which the inference can be drawn that he had not given any express instructions to anyone to use the motor car on his business whether personal or otherwise.

There is no evidence that his sons or anyone else had any implied authority to do or transact any business or use the car on his behalf, he having given the instances when it is so used. It was suggested that perhaps his son, Winston, the manager of the sloop, was on that day using the car to visit the defendant in order to discuss matters relating to the sloop. However, the defendant has said that none of his sons came to visit him on the 14th November. It therefore follows that although the car was proceeding

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away from Soesdyke and on the road in the direction of his home no one went to him at the farm with the car. And, although too much emphasis must not be placed on this fact it must not be forgotten that day was a Sunday.

In addition to these facts the defendant's reason for purchasing the car mainly for the use of his family must not be overlooked. Indeed his sons appear to have cart blanche permission to use it.

I accordingly do not feel that there is any evidence on the whole of the case from which I can properly say that the driver of the motor car was at the material time acting as the defendant's agent, that is driving under the express or implied authority to drive on his behalf. Hewitt -v- Bonvin (1940) 1 K.B. 188. Nor do I feel that I can come to the conclusion that the driver was a servant whether ad hoc or otherwise, of the defendant i.e. that he was at the time of the accident acting under his order and consort in driving the vehicle.

I accordingly dismissed the action and awarded costs to the defendant.

If, however, the driver of the car were the servant or agent of the defendant I would have awarded the plaintiff damages in the sum of $3,026.80. This amount is arrived at as follows: the value of the car at the time of the accident was $3,500.00 and although the plaintiff has not said so in so many words the fact that he valued it at $500.00 after the accident, which is not disputed, and his purchase of another leads me to the conclusion that it must

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have been damaged beyond repair. I accordingly assess his loss on the car at $3,000.00. I would also have awarded him the sum paid to the engineer i.e. $10.00 together with the cost of travel for two weeks i.e. $16.80.

K.M. GEORGE
PUISNE JUDGE (AG.).

10

NO. 6

ORDER ON JUDGMENT BEFORE THE HONOURABLE MR. JUSTICE GEORGE (AG.) - DATED THE 2ND DAY OF MAY, 1967 - ENTERED THE 17TH DAY OF OCTOBER, 1967.

No. 6

Order on Judgment - 2nd May, 1967.

This action having come on for hearing on the 18th day of February, 1967, the 1st and 24th days of April, 1967 and on this day AND UPON HEARING Counsel for plaintiff and for the
20 defendant and the evidence adduced and the Court having ordered that this action be dismissed and that judgment be entered for the defendant with costs to be taxed THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff do recover nothing against the defendant and that the defendant do recover against the plaintiff his costs of this action to be taxed.

30 BY THE COURT

John W. Romao

DEPUTY REGISTRAR (AG.).

In the Court of Appeal of the Supreme Court of Judicature

No. 7

Notice of Appeal - 6th June, 1967.

NO. 7.

NOTICE OF APPEAL

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

CIVIL APPEAL NO. 24 OF 1967

B E T W E E N:-

GURRUCHARRAN, male of age,

APPELLANT (Plaintiff)

-and-

HARRY RAMBARRAN, male of age,

RESPONDENT (Defendant)

NOTICE OF APPEAL

TAKE NOTICE that the above-named Appellant (Plaintiff) being dissatisfied with the decision more particularly stated in paragraph 2 hereof contained in the judgment of the High Court of the Supreme Court of Judicature delivered on the 2nd day of May, 1967, doth hereby appeal to the Court of Appeal of the Supreme Court of Judicature upon the grounds set out in paragraph 3.

AND the Appellant (Plaintiff) further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

In the Court of Appeal of the Supreme Court of Judicature

No. 7

Notice of Appeal - 6th June, 1967.

2. The whole decision.

3. Grounds of Appeal.

(1) The learned Trial Judge erred in law in considering the onus of proof.

(2) The learned Trial Judge erred in not finding that on 14th November, 1965, the Respondent's motor car No. PL 799 collided with the Appellant's motor car No. PN 904, in the vicinity of Coverden, Public Road, East Bank, Demerara, while the Respondent's said motor car was being driven by the respondent's servant and/or agent.

(3) The learned Trial Judge erred in not concluding that on the evidence as led, there was a presumption that the Respondent's motor car No. PL 799 was being driven by his servant or agent.

(4) The learned Trial Judge erred in not considering that the Respondent failed to lead any evidence whatever to show the circumstances in which his motor car No. PL 799 was being used at the time of the accident, and that such matters must be peculiarly within the knowledge of himself and his family and his servants and/or agents.

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(5) The learned Trial Judge erred in not finding that the Respondent's motor car No. PL 799 was being driven by his servant and/or agent because of:-

(i) The admissions on the pleadings;

(ii) the evidence of the Respondent;

(iii) the admission of the Respondent that his children usually drove his car;

(iv) the admission of the Respondent that he did not drive, that he did not employ a regularly paid chauffeur, and that he relied on his sons to drive the car regularly on his behalf;

(v) the admission of the Respondent that the car was for the use of his family;

(vi) the admission of the Respondent that the car was kept at his home at Meadow Bank, East Bank, Demerara, that his wife and the children lived there, that while he was away his wife and sons ran the house;

(vii) the admission of the Respondent that he received a report from his wife, which, if it was true, disclosed that his son Leslie was the driver of the car at the time of the accident;

(viii) the proximity of the spot of the accident to the Respondent's farm where the Respondent claimed to be at the time of the accident;

(ix) the admission of the Respondent that the car was bought for the benefit of his household;

(x) the admission of the Respondent that the car was used for his business;

(xi) the statement of the Respondent that it was not until two weeks after the accident that he became a aware of it.

(6) The learned Trial Judge misdirected himself on the question of the evidence necessary to establish that the driver of the Respondent's car at the time of the accident was his servant or agent.

In the Court of Appeal of the Supreme Court of Judicature

No. 7

Notice of Appeal - 6th June, 1967.

4. The relief sought from the Court of Appeal of the Supreme Court of Judicature is that the judgment of the Trial Judge dismissing the (Plaintiff's) Appellant's claim and awarding costs to the (Defendant) Respondent be reversed and/or set aside and the Appellant be awarded damages and his costs in the High Court of the Supreme Court of Guyana and on this appeal.

5. Persons directly affected by the appeal:-

Name	Address
(1) Harry Rambarran	Meadow Bank, East Bank, Demerara.
(2) Gurrucharran	Grove Village, East Bank, Demerara.

Evelyn A. Luckhoo

Solicitor for the Appellant (Plaintiff).

C. Lloyd Luckhoo

OF COUNSEL.

Dated this 6th day of June, 1967.

NO. 8

JUDGMENT OF THE COURT OF APPEAL

In the Court of Appeal of the Supreme Court of Judicature

No. 8

Judgment - 6th May, 1968.

BEFORE: Sir Kenneth Stoby - Chancellor

Mr. Justice Persaud - Justice of Appeal

Mr. Justice Cummings - Justice of Appeal.

1968: March 28
May 6.

Mr. C.Lloyd Luckhoo Q.C. for the Appellant.

Mr. M.H. Khan for the Respondent.

The Chancellor:

Sir Kenneth Stoby, Chancellor.

I have read the judgment of Persaud, J.A. and agree with it, but desire to make a few observations.

The question in this case is whether the defendant's car was being driven by his servant or agent at the time of the accident.

The law is, that the owner of a vehicle is liable for the negligence of the driver if the driver is his servant or, even though the driver was not the owner's servant, if the driver had the owner's authority, express or implied, to drive the car on the owner's behalf. An owner escapes

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liability if the driver is not his servant or agent at the time of the accident. The chauffeur who is employed to drive a car on the owner's business and is involved in an accident when on a frolic of his own, is not authorised to drive at the time of the accident, and, therefore, although the owner's servant, was acting outside the scope of his authority. The owner who lends his car to a friend is not liable for the friend's negligence because the friend is not his agent.

In determining whether the driver of a car is a servant or agent, the creation of the particular relationship is important. In Hill v. Beckett (1915) 1 K.B. 578, Avery J. said:

> " There is no better working rule for the purpose of determining the relationship of master and servant than whether the alleged servant is under orders of and bound to obey the alleged master; if he is, then the relationship of master and servant exists."

Proof of this, of course, is always a matter of fact.

Agency can be created in many ways, but the type of agency being here dealt with is normally created by express authority or by inference from proved facts. If the defendant's son, Loslie, was driving the car as a

result of a general authority given by the defendant whereby Leslie could drive at any time on behalf of the defendant, then the defendant is liable. If it was Leslie who asked his father for the loan of the car for his own use or took the car without his father's consent, express or implied, then the defendant is not liable.

The plaintiff proved that the defendant's car was negligently driven. He was unable to establish whether it was being driven by the defendant or his servant or agent.

Reliance was placed on Barnard v. Sully 47 T.L.R. 557 where it was held that ownership of the car was prima facie evidence that it was being driven by the defendant, his servant or agent. This prima facie evidence can be rebutted by proof of the actual facts.

The defendant sought to rebut the prima facie evidence by saying that his children can use the car at any time. He also said that he could not drive and did not employ a regularly paid chauffeur; if his sons were not available to drive he might pay someone to drive for an occasion but usually his sons drove the car. He had no objection to his sons using the car at any time as the car was for the use of the family.

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No. 8

Judgment - 6th May, 1968 (contd.).

Sir Kenneth Stoby, Chancellor (contd.).

On the day of the accident he did not know the car was being used.

At the commencement of the case, plaintiff's counsel said: "The defendant admits that the driver of motor car PL 799 was permitted and authorised by the defendant to drive the car at the time of the accident." Counsel for the defendant confirmed that statement.

The pleadings are revealing. In answer to the allegation in the Statement of Claim that "the car was being driven by the defendant, his servant or agent", the defendant pleaded a bare denial and proceeded to plead that the statement of claim disclosed no cause of action.

I assume counsel for the plaintiff sought clarification of the defence, having regard to Order 17 r. 15 (G.), which is:

> " The defendant must raise by his pleading all matters which show the action not to be maintainable."

The defence did not plead any matter which showed the action not to be maintainable.

Counsel must have found himself inhibited by the nature of the defence. Since the true facts were not pleaded, the defendant was forced to give equivocal evidence. He had not pleaded that his son was a bailee of the car, so he did not give this evidence. He was content to

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Sir Kenneth Stoby, Chancellor. (contd.)

confuse the issue by explaining that three of his sons not only had authority to use the car but they also drove him on business and could also use the car for the family. But to rebut the prima facie evidence the defendant who alone knows the facts must give evidence of the true facts. In these days of crowded vehicular traffic, the owner of a motor car is in possession of a lethal weapon. Where his car is involved in an accident the Court expects to be assisted by a disclosure of the true facts. In this case the defendant's evidence did not rebut the prima facie case of agency.

I agree with the order proposed by Persaud, J.A., including the amount of damages.

Dated this 6th day of May, 1968.

KENNETH S. STOBY
CHANCELLOR.

PERSAUD, J.A:

Judgment - 6th May, 1968 - Persaud, J.A.

On the 14th November, 1965, the appellant was driving his Vauxhall Victor motor-car No. PN 904 along the East Bank public road in a ~~southerly~~ Northerly direction from Atkinson Field. In the vicinity of Coverden which is some distance south of Atkinson Field, he passed the respondent's Rambler motor-car No. PL 799 parked on the western side of the road. The appellant continued his journey for about 2 miles when he felt an impact from

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Persaud, J.A. (contd.).

behind. The impact was caused by PL 799 ramming his car and pushing him forward for a distance of about 80 feet. PL 799 then overtook the appellant's car, travelled some 200 feet on the western parapet, struck down two small trees and stopped against another tree. Eventually, car PL 799 continued on its way without the appellant being able to ascertain the identity of the driver.

The appellant's car was severely damaged; in fact the trial Judge found that it was damaged beyond repair, and assessed the appellant's loss on the car at $3,000.

The appellant then brought an action against the respondent claiming damages for the loss of his car as a result of the negligence of the driver of the respondent's car. That action was dismissed, the Judge being of the view that there was insufficient evidence from which he could have come to the conclusion that the driver of the respondent's car was at the material time acting as the latter's agent or servant. This appeal stems from that dismissal.

During the course of the trial, the respondent admitted that he had permitted and authorised the driver to drive motor-car PL 799 at the time of the accident. He further admitted that his son Leslie had admitted to him having been the driver at the material time. He also testified that he was a non-driver, that he had bought the car to be used both for the business

of a chicken farm which he operated on the East Bank of Demerara, and for the benefit of his household, of whom Leslie was one; that he had no objection to his sons using the car at any time; and that his sons drove the car regularly, and in connection with his business.

The learned Judge found that the damage to the appellant's car was due wholly to the negligence of the driver of the respondent's car.

The question to be determined is whether from the evidence, it could be said that the respondent's son was acting as the father's agent at the time of the accident.

The respondent contends that at that time, as indeed on all journeys made by the car, the three sons were bailees of the car as was the case in Chowdhary v. Gillot (1947) 2 All E.R. 541. In that case, the plaintiff took his car to the manufacturers for repair, and upon handing it over to the receptionist, requested a 'lift' to the nearest railway station. One G. a regular employee of the manufacturers was deputed to drive the plaintiff and his wife. On the way to the station there was an accident caused by G's negligence, as a result of which, the plaintiff and his wife were injured. It was held that having received the car for repairs, the manufacturers were at the time of the accident, bailees of the car, and, so long as the bailment continued, the plaintiff had no right of control over the bailee's servants for whose negligence the bailee was liable.

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Persaud J.A. (contd.).

I do not agree that the facts in the Chowdhary's case can be equated to the facts in the instant case, and, accordingly hold that that case does not apply.

I will examine three English cases often quoted in matters such as this, with a view to extracting the legal principles applicable to cases of this nature, and then make reference to a local case, and a more recent case decided in the English Court of Appeal.

I will commence with Barnard v. Sully 47 T.L.R. 557, where it was held that where a plaintiff in an action for negligence proves that damage has been caused by the defendant's motor-car, the fact of ownership of the motor-car is prima facie evidence that the motor-car, at the material time, was being driven by the owner, or by his servant or agent. In giving the judgment, Scrutton, L.J. said -

> "..... it was admitted that the motor-car was owned by the defendant, but the defendant denied liability. At the trial it was proved that a motor-car admittedly owned by the defendant, ran into the plaintiff's van and damaged the van and injured the plaintiff. The County Court Judge withdrew the case

from the jury on the ground that there was no evidence that the motor-car was being driven by the defendant or his servant or agent. The question was whether the learned Judge was right. No doubt, sometimes motor-cars were being driven by persons who were not the owners, nor the servants or agents of the owners. As illustrations of that there were the numerous prosecutions for joy-riding, and there were also the cases where chauffeurs drove their employers' motor-cars for their private folly. But, apart from authority, the more usual fact was that a motor-car was driven by the owner or servant or agent of the owner, and therefore the fact of ownership was some evidence fit to go to the jury that at the material time the motor-car was being driven by the owner of it or by his servant or agent. But it was evidence which was liable to be rebutted by proof of the actual facts."

In Hewitt v. Bonvin 161 L.T. 360, a son after being prohibited by his father from using the latter's car, obtained his mother's permission to do so, she being authorised by the father to give such permission, and went on a journey for his own purposes when an accident occurred.

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Persaud, J.A. (contd.).

It was held that the father would be liable if it were established (1) that the son was employed to drive the car as his father's servant, and (2) that he was, when the accident happened, driving the car for his father, and not merely for his own benefit. In the course of his judgment, du Parcq, L.J. said (at p. 362) -

> "It is plain that the appellant's ownership of the car cannot of itself impose any liability on him. It has long been settled law that, where the owner of a carriage or other chattel confides it to another person who is not his servant or agent, he is not responsible merely by reason of his ownership for any damage which it may do in that other's hands .....
>
> It is true that if a plaintiff proves that a vehicle was negligently driven and that the defendant was its owner, and the court is left without further information, it is legitimate to draw the inference that the negligent driver was either the owner himself or some servant or agent of his."

And again:

> "It must be added that, in the present case, agency is not negatived merely by the fact that

> "the appellant had parted with the possession of the car to his son. It is, I think, plain, both on principle and on authority, that the owner, or other person having the control of the vehicle, may be responsible for the acts of the person driving it on the ground of agency even though he was not present in or near the vehicle so as to be able to exercise control over the driver."

In Ormrod -v- Crosville Motor Services Ltd. (1953) 2 All E.R. 753 - another case in which this question arose - Denning, L.J. said -

> "It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner's consent, driving the car on the owner's business or, for the owner's purposes."

And later -

> "The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else."

It seems to me that the principles have been well settled, and do not now admit of dispute, that is to say, that the owner of a vehicle, when not himself the driver at the

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Persaud J.A. (contd.).

time of the accident where another's vehicle is damaged by the negligence of the former, is only liable where it is shown that the driver was at the material time his servant or agent, and that ownership of a vehicle in these circumstances raises a prima facie case that at the material time the driver was so acting.

It is also apparent that in the cases hitherto referred to, there was evidence before the court of trial by the owner of the negligent vehicle as regards the journey during which the vehicle concerned was used when the accident occurred. Even a casual observer would regard this as necessary in order that the court may arrive at a conclusion on this very important issue. The point I am seeking to make is, that with the possible exception of Barnard v. Sully (where the case was withdrawn from the jury), in the cases hitherto referred to, and in the recent case of Carberry v. Davies & anor. all the evidence was before the court. I am not persuaded that that is the position in the instant case.

In Natran v. Bovell (unreported) I came to the conclusion, after examining the evidence, that the plaintiff had not proved that the second defendant (the son and driver of the vehicle) was either the servant or agent of the first defendant (the father and owner of the vehicle) and I said, -

> "I am not unmindful of the fact that such facts as would lend support to a plaintiff's case in this regard are usually within the knowledge of the defence only, and it is the easiest thing in the world for an owner to say that the driver was not his agent or servant. This, however, does not absolve the plaintiff from the burden of proof."

But it must be borne in mind that in that case, the evidence was that the son had borrowed his father's car with the latter's permission to go on an errand of his own, namely, to take a lady friend to the cinema. If the law is that the fact of ownership of a motor-car is prima facie evidence that the car at the material time was being driven by the owner, or by his servant or agent, then where that fact has been established, the onus is shifted to the owner of the vehicle to lead evidence relating to the particular journey as was said by Scrutton L.J. in Barnard v. Sully (supra), "But it was evidence which was liable to be rebutted by proof of the actual facts". If the owner refrains from adducing evidence of the actual facts, then the onus has not been discharged, and the prima facie case remains unanswered, in which event he would be entitled to succeed.

> "Prima facie evidence is that, which, not being consistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour, that it must prevail if believed by the jury unless rebutted or the contrary proved."
>
> (Jowitt's Dictionary of English Law).

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Persaud, J.A. (contd.).

The law has recently been restated by Harman, L.J. in Carberry v. Davies & anor (Times of April 10, 1968) to be that the owner of a car is liable for the negligence of the driver, even though the driver was not the owner's servant, if the driver had the owner's authority, express or implied, to drive the car on the owner's behalf. In that case the facts were as follows. D. was a coal merchant who had three lorries, one of which was driven by H. who was married to the former's niece. D. also owned a Ford Zodiac motor-car, the use of which he wished all the family to have. But he would let nobody except H. drive the car. When D's 16 year old son wished to go out in the evenings he was allowed by his father to have the use of the car, provided H. drove it. On such an occasion, when the son was on a social jaunt, an accident occurred as a result of H's negligence, and the plaintiff was injured. It was held that D. was vicariously liable for H's negligence on the ground that H. was his agent at the time of the accident, acting as his unpaid chauffeur.

In Hopkinson v. Lall (1959) L.R.B.G. 175 - a matter which engaged the attention of the Federal Supreme Court - the respondent lent his car to one R to be used by the latter for his own business or pleasure. As a result of R's negligence, the appellant was injured in an accident while R was returning with the appellant in the car from a drive. It was held that

R was not on the respondent's business at the time, and therefore the respondent was not liable to the appellant. No doubt, Barnard v. Sully was pressed upon the court, for Lewis, J. said (at p. 178) -

> " In my view, Barnard's case only applies where the court finds that a vehicle was negligently driven and that the defendant was its owner, and is left without further information."

In the case before us, however, the court is left without further information in the sense that the respondent has not, as I have already indicated, given any evidence as to the journey which was being made at the time of the accident, although from his own lips, he must have had that evidence available. It is clear from the evidence which the Judge accepted, that on the day of the accident, the respondent was on his farm having left the car at his home - two different places - some time previous, and that he had no knowledge of the accident until some time later. He was not a licensed driver; he did not employ a regularly paid chauffeur, except in the event of any of his sons not being available when he would pay someone to drive him for a particular occasion only. He went on to say -

> "Usually my sons drive the car. They drive it regularly. I had no objection to my sons using the car at any time. The car was for the use of my family. I have a wife and eleven children."

In the Court of Appeal of the Supreme Court of Judicature

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Judgment - 6th May, 1968 (contd.).

Persaud, J.A. (contd.).

First of all, I agree with the trial Judge's inference from the evidence that the defendant had not given any express instructions to anyone to use the motor car on his business whether personal or otherwise, referring to the occasion when the accident occurred. But it seems to me to be wrong to extract the sentence "I had no objection to my sons using the car at any time" out of the context of the rest of the evidence, and to attach any meaning to it other than the car was for the use of his family. The evidence can be regarded thus. Whenever the vehicle was used in connection with the respondent's business and in his interest (whether he himself was in the car or not, and except when he employed a chauffeur for a particular trip), one of his sons would drive the car. On the day in question one of his sons was driving the car with his permission, and when it is borne in mind that there is the ever-existing implied authority, it is difficult to escape the conclusion that a strong prima facie case has been established which the defendant does not answer. In my view, having regard to the uses to which the respondent said the car was put, and his admission at the trial (already alluded to), the appellant was in a much stronger position than merely establishing a prima facie case and ought to have been awarded judgment in these circumstances, as it can be said from the state of the evidence - as was held in Carberry v. Davies & anor (ubi supra) - that the

that the respondent's son Leslie was at the time of the accident acting as his unpaid chauffeur.

If the judge were to award damages, he would have awarded the appellant the sum of $3,026.80. I would make the same award. Accordingly, I would allow this appeal by reversing the judgment of the court below, and awarding to the appellant the sum of $3,026.80. The appellant is also entitled to his costs of appeal and in the court below.

G.L.B. Persaud
JUSTICE OF APPEAL.

CUMMINGS, J.A:

Judgment - 6th May, 1968.

Cummings J.A.

This is an appeal from a judgment of George, J. in the High Court in an action for negligence resulting from a collision of the appellant's (plaintiff's) and respondent's (defendant's) motor-cars Numbers PN 904 and PL 799 respectively on the 14th November, 1965 at Coverden, East Bank Demerara. The learned trial judge found that the driver of car PL 799 was negligent but that the plaintiff had not established that he was the servant or agent of the defendant and accordingly dismissed the plaintiff's claim with costs.

Counsel for the appellant repeated in this Court his submission before the learned trial judge that where ownership is found there is a rebuttable presumption that the driver is either the owner or his the servant or agent. He relies on the well-known case of Barnard v. Sully (1931) 47 T.L.R. 557 in which Scrutton, L.J. (Slasser & Greer LLJ. concurring) said:

In the Court of Appeal of the Supreme Court of Judicature

No. 8

Judgment - 6th May, 1968 (contd.).

Cummings J.A. (contd.).

" But, apart from authority the more usual fact was that the motor then was driven by the owner, and therefore the fact of ownership was some evidence fit to go to the jury that at the material time the motor-car was being driven by the owner of it or by his servant or agent. But it was evidence which was liable to be rebutted by proof of the actual facts."

In the course of his judgment the learned trial judge said: "I accept and believe the evidence led by the plaintiff as well as that led by the defendant." On the issue now subject to review the defendant said:

"I am the defendant. I live at 24 Meadow Bank, East Bank Demerara. I own PL 799. I am not a driver. My children use the car. They can use it at any time. On the 14/11/65 I was at my farm at Soesdyke. I spent about three weeks at my farm from about the 1st to 21st November, 1965. I left my car at home. I did not use it on 14/11/65. I did not know where it was on that day. I heard about the accident in which the car was involved afterwards."

And under cross-examination:-

" I have never had a licence to drive. PL 799 is the first carwhich I have owned. I bought it in 1961. It was a new car. I did not employ a regularly paid chauffeur. If my sons

"were not available to drive I may pay someone to drive for an occasion i.e. if I want to come down to Georgetown. Usually my sons drive the car. They drive it regularly. I had no objection to my sons using the car at any time. The car was for the use of my family. I have a wife and twelve children. Three of my children were licensed drivers in 1965. They are Dennis aged 24, Leslie aged 22, Winston aged 20 years. In November, 1965 all the children lived in my home at Meadow Bank.

I do not know what happened on the 14th November. I first knew that the car was involved in an accident when I first went back to Meadow Bank on the 21st November, 1965. My wife told me. I was told the 14/11/65. My wife told me Leslie was driving. I did enquire from Leslie who admitted that he was driving the car on the 14/11/65.

My main household was at Meadow Bank. My car PL 799 was bought for the benefit of the household. It was also used in the course of my business i.e. if I had to come to Georgetown to transact any business. The car has brought me from the chicken farm sometimes. Besides the chicken farm and my sloop I had no other business activities."

Commenting on this evidence the learned trial judge said:

" However, one must examine the defendant's evidence in order to see whether he has given sufficient information of user at the material time.

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No. 8

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Cummings, J.A. (contd.).

"He has given instances when he uses the car. These are to convey him from his farm to his home or to Georgetown in order to transact business and I daresay, although no evidence has been lead in this regard whenever he desires to use it on some personal mission. The fact that he did not know where the car was or who was using it that Sunday is in my opinion sufficient evidence from which the inference can be drawn that he had not given anyexpress instructions to anyone to use the motor-car on his business whether personal or otherwise.

There is no evidence that his sons or anyone else had any implied authority to do or transact any business or use the car on his behalf, he having given the instances when it is so used. It was suggested that perhaps his son, Winston, the Manager of the sloop, was on that day using the car to visit the defendant in order to discuss matters relating to the sloop. However, the defendant has said that none of his sons came to visit him on the 14th November. It therefore follows that although the car was proceeding away from Soesdyke and on the road in the direction of his home no one went to him at the farm with the car. And, although too much emphasis must not be placed on this fact it must not be forgotten that day was a Sunday.

In addition to these facts the defendant's reason for purchasing the car mainly for the use of his family must not be overlooked. Indeed his sons

"appear to have cart blanche permission to use it.

I accordingly do not feel that there is any evidence on the whole of the case from which I can properly say that the driver of the motor-car was at the material time acting as the defendant's agent, that is driving under the express or implied authority to drive on his behalf. Hewitt v. Bonvin (1940) 1 K.B. 188. Nor do I feel that I can come to the conclusion that the driver was a servant whether ad hoc or otherwise, of the defendant i.e. that he was at the time of the accident acting under his order and consort in driving the vehicle.

I accordingly dismissed the action and awarded costs to the defendant."

In Hewitt v. Bonvin 161 L.T. p. 361 The Court of Appeal reversing the judgment in the plaintiff's favour in the court below said per MacKinnon L.J. at p. 361:

"As I see it, the plaintiff to make the father Bonvin liable, must establish -

(1) that the son was employed to drive the car as his father's servant; and

(2) that he was, when the accident happened driving the car for the father, and not merely for his own benefit and for his own concerns.

In my opinion the plaintiff did not establish either of these propositions ....."

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No. 8

Judgment - 6th May, 1968. (contd.).

Cummings, J.A. (contd.).

And per Du Parcq, L.J. at p. 362:

" It is plain that the appellant's ownership of the car cannot of itself impose any liability on him. It has long been settled law that, where the owner of a carriage or other chattel confides it to another person who is not his servant or agent, he is not responsible merely by reason of his ownership for any damage which it may do in that other's hands: See the judgment of Littledale J. in Laugher v. Pointer (5 B. and C. 547 at pp. 561 to 563), where the distinction is drawn between the responsibility of the owner of movable property and that of the occupier of a house or land. This part of the judgment of Littledale, J. was expressly approved by the Court of Exchequer in Quarman v. Burnett (6 M. and W. 499, per Parke, B. at p. 509, and see especially at pp. 510, 511). It is true that if a plaintiff proves that a vehicle was negligently driven and that the defendant was its owner, and the court is left without further information, it is legitimate to draw the inference that the negligent driver was either the owner himself or some servant or agent of his. Barnard v. Sully (47 Times L. Rep. 557). But in the present case all the facts were ascertained and the judge was not left to draw an inference from incomplete data."

" If I am right as to the law, it follows that the learned judge's decision can

"be supported if, and only if, the evidence proves that the appellant's son was acting for and on behalf of the appellant. Unfortunately it is not clear that the learned judge applied his mind to this precise question. The judge has found that the son had permission to drive the car, or at least that his mother, who had authority to represent the appellant, knew that he was taking the car, and knew the purpose for which he was taking it. This finding is consistent with a mere loan or bailment of the car. If, however, this court had thought that on a fair view of the evidence agency was established, it would clearly have been right to dismiss the appeal. In my opinion agency was not proved."

In the instant case as in Hewitt v. Bonvin supra, the Court was not as in Barnard v. Sully without further information. There was ample information to justify the inferences drawn by the learned trial judge and his conclusion that the plaintiff had failed to establish the requirements as laid down in Hewitt v. Bonvin. Indeed I am myself unable to draw any different inferences or arrive at any other conclusion. I am unaware of any rule of law which in circumstances such as those found as matters of fact in this case, shift the onus on to the defendant to say in the witness-box that his son was not at the material time his servant or agent. Moreover, it was open to the plaintiff to cross-examine the defendant on this issue and also to join the son, Leslie, whom the father said "admitted" that he was driving the car when it was involved in the accident.

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No. 8

Judgment - 6th May, 1968 (contd.).

Cummings, J.A. (contd.).

In Natram v. Joseph Bovell and Gordon Bovell Persaud, J. as he then was, said:

> " The view I hold in the instant case is that the plaintiff has failed to prove that the second defendant fell in either category. I am not unmindful of the fact that normally such facts as will lend support to a plaintiff's case in this regard, are usually within the knowledge of the defence only, and it is the easiest thing in the world for an owner to say that the driver was not his servant or agent. This, however does not absolve the plaintiff from the burden of proof."

The only differing circumstances in this case was that the owner had given permission for the specific journey, whereas here he had given a general permission to his sons to use the car whenever they wanted to do so. In my view that does not support the application of any different principle.

See also Lall v. Hopkinson (1959) B.G.L.R. p. 175. Decided in Canberry vs. Davis et anor.

I adopt with humility and respect, and apply as expressly in point the remarks of du Parcq L.J. in Hewitt v. Bonvin (supra):

> "Ultimately the question is one of fact. The plaintiff has failed to show more than a bailment of

"the car by the appellant to the person responsible for driving it negligently. This is not enough to make the appellant liable."

In the Court of Appeal of the Supreme Court of Judicature

No. 8

Judgment - 6th May, 1968. (contd.).

Cummings J.A. (contd.).

As I can see no reason whatever for disturbing the learned trial judge's perception and/or evaluation of the evidence, I would dismiss the appeal with costs.

Percival A. Cummings
JUSTICE OF APPEAL.

SOLICITORS:

Miss E.A. Luckhoo for Appellant.

J.A. Jorge for Respondent.

In the Court of Appeal of the Supreme Court of Judicature

No. 9.

Order on Judgment - 6th May, 1968.

NO. 9

ORDER ON JUDGMENT

BEFORE THE HONOURABLE SIR KENNETH STOBY, CHANCELLOR

THE HONOURABLE MR. G.L.B. PERSAUD, JUSTICE OF APPEAL

THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF APPEAL

DATED THE 6TH DAY OF MAY, 1968.

ENTERED THE 9TH DAY OF MAY, 1968.

UPON READING the notice of appeal on behalf of the abovenamed appellant (plaintiff) dated the 6th day of June, 1967 and the record of appeal filed herein on the 26th day of February, 1968

AND UPON HEARING Mr. C. Lloyd Luckhoo, Q.C. of counsel for the appellant (plaintiff) and Mr. M.H. Khan of counsel for the respondent (defendant)

In the Court of Appeal of the Supreme Court of Judicature

No. 9

Order on Judgment - 6th May, 1968. (contd.).

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED that this appeal be allowed and that the judgment of the Honourable Mr. Justice George dated the 2nd day of May, 1967 in favour of the respondent (defendant) be wholly set aside and judgment entered in favour of the appellant (plaintiff) in the sum of $3,026.80 (three thousand and twenty-six dollars and eighty cents) with costs in this court and in the court below to be taxed and paid by the respondent (defendant) to the appellant (plaintiff).

BY THE COURT

H. MARAJ

SWORN CLERK & NOTARY PUBLIC

FOR REGISTRAR.

NO. 10

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

In the Court of Appeal of the Supreme Court of Judicature

No. 10

Order granting Conditional Leave to Appeal to Her Majesty in Council. 26th June, 1968.

BEFORE THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF APPEAL (IN CHAMBERS)

DATED THE 26TH DAY OF JUNE, 1968.

ENTERED THE 4TH DAY OF JULY, 1968.

UPON the Petition of the above-named respondent (defendant) dated the 23rd day of May, 1968 for leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal of the Supreme

No. 10

Order granting Conditional Leave to appeal to Her Majesty in Council. 26th June, 1968 (contd.).

Court of Judicature delivered herein on the 6th day of May, 1968

AND UPON READING the said petition and the affidavit of solicitor for the respondent (defendant) dated the 23rd day of May, 1968 in support thereof

AND UPON HEARING Mr. Dabi Dial, solicitor for the respondent (defendant) and Mr. David Singh of counsel for the appellant (plaintiff)

THIS COURT DOTH ORDER that subject to the performance by the said respondent (defendant) of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the respondent (defendant)

AND THIS COURT DOTH FURTHER ORDER that the respondent (defendant) do within 90 (ninety) days from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of $2,400 (two thousand four hundred dollars) with one or more sureties or deposit into court the sum of $2,400 (two thousand four hundred dollars) for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the appellant (plaintiff) in the event of the respondent (defendant) not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the appellant (plaintiff) on such appeal

In the Court of Appeal of the Supreme Court of Judicature

No. 10

Order granting Conditional Leave to Appeal to Her Majesty in Council. 26th June, 1968 (contd.).

AND THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution

AND THIS COURT DOTH FURTHER ORDER that the respondent (defendant) do within six (6) months from the date of this order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this court to certify that the said record has been settled and that the provisions of this order on the part of the respondent (defendant) has been complied with

AND THIS COURT DOTH FURTHER ORDER that the respondent (defendant) be at liberty to apply at any time within six (6) months from the date of this order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of this court of due compliance on his part with the conditions of this order

AND THIS COURT DOTH FURTHER ORDER that there be a stay of execution of the said judgment and order of this Court dated the 6th day of May, 1968 until the final determination of this appeal.

BY THE COURT
H. MARAJ
SWORN CLERK & NOTARY PUBLIC
FOR REGISTRAR.

Respondent's Exhibits (By consent).

E X H I B I T S

"A"

CERTIFICATE OF REGISTRATION

"A"
Certificate of Registration.

BRITISH GUIANA.

THE MOTOR VEHICLE AND ROAD TRAFFIC ORDINANCE, CHAPTER 280

****

CERTIFICATE OF REGISTRATION

FOR A

MOTOR VEHICLE

****

DUPLICATE

SEC. 5 MOTOR VEHICLE AND ROAD TRAFFIC ORDINANCE

COLONY OF BRITISH GUIANA.

Identification Mark	PL 799
Type	Motor Car
Colour	Green

MANUFACTURER'S SPECIFICATION:-

Name	Rambler
Description of Vehicle	Saloon
Engine Number	30307
Chassis Number	C 515416
Propulsion	I.C.
Horse Power	23
Unladen Weight	2940 lb.
New or Second-hand	New
If Second-hand, previous registration	-
Seating capacity	-

****

Respondent's Exhibits (By consent).

PARTICULARS OF OWNERS:-

Date of first Registration	27th day of June, 1961.
Owner's Name	Harry Rambarran
Address	Meadow Bank E.B.D.

"A"

Certificate of Registration (contd.).

(Licence Revenue Departmental Seal affixed).

"B"

LETTER OF DEMAND

"B"

Letter of Demand 19th May, 1966.

19th May, 1966.

Harry Rambarran Esq.,
Meadow Bank
East Bank Demerara. (By registered post).

Dear Sir,

On the 14th November, 1965, your motor car No. PL 799 was so carelessly and negligently driven by your son Leslie Rambarran, your servant and/or agent, that the same came into violent contact with motor car PN 904, the property of our client Gurrucharran of 87, Grove, East Bank Demerara, on whose behalf we write, and caused the same to be an almost complete wreck.

Respondent's Exhibits. (By consent).

"B"

Letter of Demand 19th May, 1966. (contd.).

We had a survey made in respect of the damaged vehicle and would be pleased to discuss with you and your legal representative what sum should be paid to our client to satisfy the damages which he has suffered.

Please let us have an early reply.

Yours faithfully,

Luckhoo & Luckhoo.

S 087435

ACCEPTANCE RECEIPT REGISTERED PACKET

******

Addressed Harry Rambarran
Meadow Bank
E.B.D.

Insured for
?

Post Office Seal.

Received by ?

****

2 of

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

B E T W E E N:

HARRY RAMBARRAN, male of age,

(Plaintiff) Appellant

-and-

GURRUCHARRAN, male of age,

(Defendant) Respondent.

RECORD OF PROCEEDINGS

OF 1969

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

B E T W E E N:

HARRY RAMBARRAN, Male of age,

(Plaintiff) Appellant

- A N D -

SURAJ NARRAN, Male of age,

(Defendant) Respondent.

RECORD OF PROCEEDINGS