

Automobiles: Liability of Parent Consenting to Child's Use of Car, for Injuries Caused: What Disobedience of Child to Parent's Directions Vitiates Consent

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RECENT DECISIONS

Automobiles—Liability of Parent Consenting to Child's Use of Car, for Injuries Caused—What Disobedience of Child to Parent's Directions Vitiates Consent.—On November 1, 1937, defendant Austin Hartman, while driving his father's automobile, crashed into an electric light pole in the city of Detroit, causing injuries to a passenger, resulting in his death. Suit was brought by the administrator of the decedent against Austin, and his father Anthony, for damages resulting from the son's alleged negligence. It appeared that the father consented to the son's using the car to go to work, but told him not to carry passengers for hire. Despite the father's instructions, the son made a practice of taking fellow workers along at a daily charge. The trial court found that no cause of action existed against the father, but held the son liable. On appeal held, the father was liable, under Mich. Comp. Laws (1929) Sec. 4648, which makes a father liable for injuries resulting from the negligent operation of an automobile, if the automobile is driven with his consent. The gist of the liability is the consent given by the owner to another to operate an instrumentality of danger on a highway. The statutory liability predicated upon the owner's consent holds, even though the instructions of the owner are violated. *Sweeney v. Hartman et al.*, 296 N.W. 282 (Mich. 1941).

The principal case differs from another Michigan case which the court cited, interpreting the same statute. *Christiansen v. Hilber*, 282 Mich. 403, 276 N.W. 495 (1937). In this case, a father who owned a truck which was used in his business authorized his son to drive it in carrying out the business enterprise. The son was told only to take it when "we needed it." In using the truck for pleasure purposes without his father's consent, the son had an accident resulting in injury to another. It was held that the father had never given consent to the use of the truck for any but business purposes, and that at the time of the accident the son had not been authorized to use the truck. In this case there was no consent given to operate the truck at any time, except for business purposes. It seems difficult to find what facts do or do not vitiate the consent of the owner. Is it the violation of the instruction as to a (a) use or (b) mode of operation? The court's interpretation of the *Christiansen case*, *supra*, in the principal case would indicate that it is the former in Michigan.

In New York there is a statute (Vehicle and Traffic Law, Consol. Laws, Sec. 59, C. 71) which imposes liability upon the owner of every motor vehicle for death or personal injuries resulting from negligence in the operation of the motor vehicle by any person legally using or operating the same with the permission, express or implied, of the owner. The statute was interpreted in *Arcara v. Moresse*, 179 N.E. 389 (N.Y. 1932) where the plaintiff was injured by a collision with the defendant's car, which the defendant had loaned to his nephew, Maggio. Maggio was in the car at the time of the accident, but the car was driven by Barone, with Maggio's consent. The owner of the car had given Maggio instructions not to let Barone or any other person, other than himself, drive or operate the vehicle. Despite the fact that Maggio was disobeying the instructions, the owner was held liable, because Maggio at the time was using the car with the owner's consent. The court stated: "If the limiting instructions relate to the manner of operation, such as speeding, or careless pilotage of the car, though the instructions be disobeyed, nevertheless the use is with permission of the owner." Here the thing forbidden was considered to be related to the operation of the car, not to the use which might be made of it. The differentiation appears to be the same as that of the principal case.

The New York Supreme Court found a father not liable under similar reasoning in *Chaika v. Vandenberg*, 252 N.Y. 101, 169 N.E. 103 (1929). The owner of the car had allowed his son to use it to go to Long Island, but strictly forbade him to go into Manhattan. The accident happened while the son was driving in Manhattan, contrary to his father's directions. The court held that the son was using the automobile at the time of the accident without the consent of his father, since the use of the car was not in conformity with instructions. The father was not liable under the statute.

In *Robinson v. Shell Petroleum Corp.*, 251 N.W. 613 (Ia. 1933), the plaintiff was injured when the car in which she was driving collided with a car owned by the defendant and driven by one of its salesmen. The defendant instructed all salesmen not to use their cars for other than business purposes. When the accident happened, the salesman was on his way to pitch a baseball game. Defendant was held not liable under Iowa Code (1931) Sec. 5026, which provides that "in all cases where damage is done by the car, driven by consent of the owner, by reason of negligence of the driver, the owner of the car shall be liable for such damage." The court considered that the salesman was not driving with the consent of the defendant since the permission did not extend to use for other than business purposes.

In some states where no statute exists, there appears to be similar policy. In *Roberts v. Vacca et al.*, 7 N.J. 865, 147 Atl. 463 (1929), the son had his father's permission to use the car and take three women home. When the accident happened, the son was driving south-west instead of north-east, the direction necessary to reach the women's abode. The father was not held liable. In *Shefts et al. v. Free et al.*, 146 Atl. 185 (N.J. 1929), the son worked for his father. He had been directed to put a truck in the garage. The son went past the garage to a drug store for his own purposes; the accident happened while he was returning to the garage. The father was held not liable. In *Wilson et al. v. Mason et al.*, 147 Atl. 235 (N.J. 1929), the son had asked the father to allow him to use the car to go to church. After going to church, the son took a drive with two friends, going in a direction away from their homes. While he was on this drive, the accident happened. The father was not held liable. This group of cases seems to apply the distinction between mode of operation and use of the car. In each case, the use of the car by the sons was prohibited or at least not consented to. In another case, *Jones v. Cook*, 123 S.E. 407 (W.Va. 1924), the defendant allowed his seventeen-year old step daughter to use his car to participate in a local high school parade, after which she went for a pleasure drive with some friends, during which the accident happened. The father was held liable. Here, despite the fact that there was disobedience as to the *use* of the car and not merely as to *instructions* concerning the operation, the owner was held liable. In all the cases previously discussed where the father was held *not* liable because his directions had been disobeyed and his consent to drive was therefore considered vitiated, the car would not have been in the place where it was at the time of the accident if the directions had been obeyed. While this is also true in *Jones v. Cook*, *supra*, the court there held the parent liable, because the drive was the natural and probable consequences of the child's expressly authorized use of the car for the parade. Under this reasoning, it would appear that a father would generally be responsible for injuries occurring when his child drives his automobile, so long as permission was given for some purpose, although that purpose was willfully departed from.

In *Galpin v. Fisher*, 192 N.W. 205 (Neb. 1923), the defendant owner furnished his son with a car to drive to school, with instructions to leave the car

in a garage and then drive directly home after school. The father knew of the son's previous disobedience. On this occasion, the son took the car out of the garage before school started and while driving "around town" struck and injured the plaintiff. The father was held liable under these instructions: "If the son had deviated materially and substantially from the instructions so given him, then the defendant would not be liable, but if the deviation had been only slight, then such deviation would not of itself relieve the defendant from liability." This case, too, appears to apply a rationale somewhat different from the majority of the cases previously discussed.

In Wisconsin, the owner of an automobile is not liable whether he gives his consent to his child to drive or not, unless there can be proved a master and servant or principal and agency relationship. In *Geffert v. Kayser*, 179 Wis. 571, 192 N.W. 26 (1923), the son procured his father's permission to take the car for the purpose of taking a friend to a dance. He was on his way from his father's home to the residence where he was to call for her at the time the accident occurred. The court, in holding the father not liable, stated that unless the son is acting as an agent of the father, the father is not liable. See, also, *Crosset v. Goelzer*, 177 Wis. 455, 188 N.W. 627 (1922); *Hopkins v. Droppers*, 184 Wis. 400, 198 N.W. 738 (1924).

From the foregoing, it is apparent that, in states other than those applying the Wisconsin rule, it is difficult to determine the liability of a parent for accidents occurring while a child is driving the parent's automobile. The tenor of decisions seems to be that a "use" of the car other than that authorized by the parent relieves him from liability for resulting injury, but a mere disobedience of "instructions" as to the mode of driving, carrying of passengers, and the like, is not sufficient to free the parent from liability, either under pertinent automobile statutes or the common law. It is difficult, however, to determine what is a forbidden "use" and what is merely a disobedience of "instructions."

ROBERT S. WRZESINSKI.

Domestic Relations—Validity of Contract Releasing Husband of Duty to Support his Wife.—In 1930, pending a separation action, the parties entered into an agreement whereby the wife released certain property interests and sole custody of the children. The husband agreed to pay a lump sum of \$3,000 and the wife agreed to accept this payment "in full satisfaction for all claim of support and maintenance of all kind." The money was paid and the separation action was abandoned. Ten years later the wife brought this action for divorce and petitioned for alimony. The trial court granted her \$7 a week alimony, but the husband objected to this and claimed he was released forever from the duty of support because of their former agreement. The Appellate division affirmed the divorce decree but modified it by striking out the provision for support on the ground that alimony was barred by the separation agreement between the parties.

Held: Judgment of the Appellate division reversed and that of the trial court affirmed. The existence of a separation agreement in full satisfaction of all claim of support does not preclude an award of alimony. Although husband and wife may freely contract with one another, "a husband and wife cannot contract . . . to relieve the husband from his liability to support his wife." (Domestic Relations Law, Consol. Laws (1896) Ch. 15 #51.) The court considered the contract to be an attempt by the husband to purchase exemption from his duty of support. The agreement was held not to be within the rule