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Torts - Master-Servant - Automobile Accident Liability - Sun Land & (and) Cattle Co. v. Brown

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TORTS—Master-Servant—Automobile Accident Liability. Sun Land & Cattle Co. v. Brown, 394 P.2d 387 (Wyo. 1964).

Baker, an employee of defendant—Sun Land & Cattle Company, used his employer's pickup truck to retrieve his personal saddle from a fence at a rodeo grounds where it had been left the day before after a neighborhood rodeo. Baker also planned to contact several persons in regard to the possible sale of the saddle during the trip. After retrieving the saddle and contacting the possible purchasers of the item, the employee and the truck were involved in a serious, almost head-on, two vehicle accident near Bairoil, Wyoming, on the way back to defendant-employer's ranch. In a civil action following the accident, evidence was introduced by defendants to the effect that the vehicle was not being properly used in company business at the time of the collision, that the actual purpose of the trip was as stated above, that the truck did carry some ranching equipment owned by the defendant-employer, and that a saddle was furnished to Baker by Sun for his use on the ranch. No evidence was introduced to the effect that Sun knew Baker was using his own saddle on occasion in his ranching duties, or that it was required to be used, or that the furnished saddle was unfit for use. There were no conflicts, vagueness, or inconsistencies in the evidence presented by the defendants. All evidence produced by the defendants was left unchallenged, uncontroverted and uncontradicted by plaintiffs and it was shown clearly that Baker was not within the scope or course of his employment when the accident occurred. The jury paid little attention to this and found for the plaintiffs. Upon appeal to the Wyoming Supreme Court decision of the trial court was affirmed. In affirming, the court *held* that the employee's trip was sufficiently connected with his employment to place him within the scope of employment and that only the evidence most favorable to the successful party, together with all inferences reasonably drawn therefrom, may be considered, and conflicting evidence of the unsuccessful party must be disregarded.

It has been stated that proof of ownership of a vehicle driven by one other than the owner raises a prima facie presumption that the driver was the owner's agent and was act-

ing within the scope of his authority or employment.[1] However, this may be overcome as a *matter of law* by other evidence.[2] It has also been stated that the plaintiff must, to establish a prima facie case that employee was driving the vehicle in the course and scope of his employment, come forward with something more than an attack upon the credibility of adverse witnesses.[3]

The settled law pertaining to master-servant relations and scope or course of employment indicates that the master is liable only when the instrumentality is being used by the servant for the purpose of advancing the employer's business or interests as distinguished from the private affairs of the servant.[4] It also has been stated that upon introduction of evidence showing that at the time of the accident the employee was using the employer's auto to carry out a personal errand for his own convenience, it has frequently been held as a *matter of law* that he was acting outside the scope of his employment so that the employer could not be held liable.[5] In general, the question whether an employee-driver was acting within the scope of his employment involves an inquiry into the contract and factors of employment and the relation of his acts at the time of the accident to the service he *actually performed* pursuant to his employment.[6] Any use of the motor vehicle which is reasonably incidental to the performance of the duties with which the employee is charged is ordinarily deemed to be within the scope of his employment.[7] Whether an employee was acting within the course or scope of his employment at the time of an accident involving a vehicle owned by the employer is a fact question for a jury on *conflicting evidence,* but becomes a *question of law* for the court if the facts are undisputed and reasonable minds cannot differ as to the justifiable inferences and conclusions to be drawn from the evidence.[8]

In an Arizona case it was said that where the driving in-

1. Summerville v. Gillespie, 181 Ore. 144, 179 P.2d 719 (1947).
2. *Ibid.*
3. Balise v. Underwood, 62 Wash.2d 195, 381 P.2d 966 (1963).
4. RESTATEMENT (SECOND) OF AGENCY § 238, at 527 (1958).
5. Annot., 51 A.L.R.2d 8, at 50 (1957).
6. 8 AM. JUR. 2d *Automobiles & Highway Traffic* § 617, at 168 (1963).
7. *Ibid.*
8. McNew v. Puget Sound Pulp & Timber Co., 37 Wash.2d 495, 224 P.2d 627 (1950).

volved is, in actuality, an independent journey as distinguished from a mere detour, the servant is pursuing an enterprise of his own and the master is not liable for the servant's conduct during the trip.[9] In a later case the Colorado Supreme Court held in a case of a requested instruction that if the jury should find that defendants would have realized some incidental benefit from the use of their truck by an employee, such incidental benefit alone would not make defendants responsible for actions of the employee in the operation of the truck.[10] In another case, decided in the State of Washington, it appeared that its Supreme Court was applying the applicable law rigidly.[11] In that case an employee of a freight company had duties of soliciting freight from customers, those duties included taking customers and potential customers on hunting and fishing trips on holidays and weekends. At the time of the accident the employee had the use of the employer's automobile on a weekend to make a trip with his family to a lake for the express purpose of testing sights on a deer rifle in contemplation of taking several customers deer hunting a week later. The court held that the employee's scope of employment could not be stretched to include this venture and that the employer was not liable.[12] In a Wyoming case decided in 1959, upon which the majority of the court in *Brown* relied, it was found that the defendant was clearly and without question an employee of the defendant company and that he was acting within the scope of his employment.[13] That case involved a new employee, hired on the day of the accident involved, using his own vehicle and being directed by another employee on a very clear and definite mission for the defendant ranch owners pertaining to picking up a third employee at a predetermined location.[14] It would appear that there was no real question of liability here as the facts were clear, concise and uncontradicted.

In deciding the *Brown* case the court, in holding the defendant-owner of the vehicle involved liable, relied on the presence of ranching equipment (wire stretchers, wire, etc.)

9. McCauley v. Steward, 63 Ariz. 524, 164 P.2d 465 (1945).
10. Gibbons & Reed Co. v. Howard, 129 Colo. 262, 269 P.2d 701 (1954).
11. Barnett v. Inland Motor Freight, 44 Wash.2d 619, 269 P.2d 592 (1954).
12. *Ibid.*
13. Husted v. French Creek Ranch, Inc., 333 P.2d 948 (Wyo. 1959).
14. *Id.* at 951.

in the box of the pickup. The court felt that, to some extent, this indicated that Baker was on a mission for his employer. In an Oklahoma case involving a collision of the type present in the *Brown* case, the defendant's truck, upon inspection after the accident, contained paperhanging tools and paper.[15] The driver-employee of the defendant-owner was found to have no pending contracts in the area of the accident scene and the trial court held that such evidence would not be sufficient to show that the driver was within the course or scope of his employment such that the question was not even submitted to the jury.[16] Upon appeal, the Supreme Court of Oklahoma affirmed the action of the trial court and stated that where a plaintiff establishes a prima facie presumption that the person driving the truck was an employee of the defendant-owner acting within the scope of his employment, such presumption is dispelled when the defendant shows by clear, convincing, undisputed and not inherently probable evidence that the driver was not acting within the scope of his employment.[17] In such a case, the court said, the trial court would commit error in denying a motion for a directed verdict if made by the defendant-owner.[18]

In conjunction with the problem of scope or course of employment involved in the *Brown* case, there was also the problem regarding the amount or sufficiency of evidence needed to support the findings of the trial court upon appeal. It is a general rule that the findings of the trial court are presumed to be supported by sufficient evidence and a contrary assumption will not be made by the reviewing court.[19] In reviewing the sufficiency of the evidence to sustain the findings, the appellate court will give the strongest probative value or force to the evidence in support of the findings and will consider all reasonable inferences to be drawn therefrom, viewing the evidence in the light most favorable to the findings made by the trial court.[20] Also, in determining whether there is evidence to sustain the findings, only the evidence and inferences favorable to the findings will be considered.[21]

15. Pollard v. Grimes, 202 Okla. 118, 210 P.2d 778 (1949).
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. 5 C.J.S. *Appeal & Error* § 1564(6) (1958).
20. *Id.* at p. 1278.
21. *Ibid.*

However, where there is no substantial conflict in the evidence, it has been often held that the presumption in favor of the trial court's conclusion does not apply, as where a trial court appears to have taken an erroneous view of the law as applied to the facts.[22]

In 1957 the Wyoming Supreme Court was following these rules quite explicitly.[23] In 1956 the court stated that where the assignments of error are that the judgment of the trial court is not sustained by sufficient evidence or is contrary to the evidence and is contrary to the law, the Supreme Court must assume that the evidence in favor of the successful party is true and must not consider evidence of the unsuccessful party in conflict therewith, but must give to the evidence of successful party every favorable inference which may reasonably and fairly be drawn from it.[24] Again the same year the court reiterated this stand when it stated that in determining the validity of a judgment of a trial court, it will consider only testimony favorable to the party for whom the judgment was rendered.[25] Other cases stated the same rule, and in so doing, always emphasized the statement that *conflicting evidence* of the unsuccessful party may be disregarded.[26] It also stated that the court would not be bound by contradictions between the favorable testimony of the witnesses of the successful parties and the physical facts.[27] The court, in 1963, discussed its *duty* in regard to drawing inferences and disregarding *conflicting evidence.*[28]

In the principal case it certainly cannot be argued that the Supreme Court *disregarded* evidence and testimony. It went along with the general rule as to the sufficiency of evidence and extended that rule to the breaking point. As noted earlier, *there was no conflicting evidence* pointed out in the opinion in *Brown* and the plaintiffs offered little or no evidence other than information substantiating their claims for damages due to bodily injury suffered by them from all indications. They did not challenge or cast doubt upon the evi-

22. *Id.* at 1288-89.
23. Fisher v. Robbins, 78 Wyo. 50, 319 P.2d 116 (1957).
24. Trail Motors, Inc. v. First Nat'l Bank, 76 Wyo. 152, 301 P.2d 775 (1956).
25. Strom v. Felton, 76 Wyo. 370, 302 P.2d 917 (1956).
26. Oeland v. Neuman Transit Co., 365 P.2d 806 (Wyo. 1961).
27. *Id.* at 808.
28. Brasel & Sims Constr. Co. v. Neuman Transit Co., 378 P.2d 501 (Wyo. 1963).

dence as presented by the defendants showing that the defendant's employee was outside the scope or course of employment when the accident occurred. It would appear that it was plaintiffs' burden to go further and establish by a preponderance of the evidence that the vehicle was being properly used in company service at the time of the accident. This was certainly not accomplished. From all indications the plaintiffs did not even attack the credibility of adverse witnesses. Again, it would also appear from the manner in which the majority opinion was written that the plaintiffs clearly did not meet that burden and nothing is said as to whether or not they even attempted to do so. From the opinion it is clear that the court placed a tremendous amount of weight upon the status of the saddle to determine their conclusion. It is submitted that such weight could not fairly and reasonably be presumed present or such an inference drawn from the facts as presented. It is felt that the status of the saddle had little or no evidentiary value to aid the court in determining the defendant-employee's scope and course of employment. Again, one purpose of the trip, the selling or attempted sale of the saddle, was not contradicted by the plaintiffs. The status of the saddle and the admitted fact that the truck owned by defendant—Sun Land & Cattle Co. was carrying ranch equipment determined liability in this case without the plaintiffs' having to meet any real burden of proof. In sustaining the trial court's decision, and with no mention of the evidence as to the proposed sale, the Supreme Court stated quite clearly that the principal purpose of the trip of the employee-Baker was to acquire and use the saddle at the ranch. It further stated that the jury could reasonably find that the purposes of defendant-employee would be served; therefore, the court could not say, as a matter of law, that the employee was outside the scope or course of employment. The court also stated that the jury was not bound to accept the statements in regard to the saddle as true nor find for defendant-employer *even if* they were true, again, without the benefit of any conflicts, or vagueness, or inconsistencies present in evidence.

It clearly appears that the Wyoming Supreme Court has extended the boundaries and provisions of the rules pertaining to sufficiency of evidence and burden of proof in master-servant cases together with an extension of the provisions

within which an employee may be found to be within the scope or course of his employment. It appears that the court has disregarded case law present within these areas in writing its opinion in the *Brown* case. The court has indicated to future injured plaintiffs in such cases that all they need do is prove injury and damages and stand more or less mute while the jury finds the employer liable even though his employee was clearly outside the scope or course of his employment when the accident occurred. It can almost be said that in Wyoming, as a matter of law, an employee is within the scope of his employment if he is driving a vehicle owned by the employer and carrying somewhere within that vehicle articles that pertain, in some minor way, to his employment. Apparently nothing else need be proven. *Brown* is a case in which the Wyoming Supreme Court made a decision and in so doing was forced to stretch the applicable law beyond the extremes of elasticity. It is clear that this case will serve to extend the term "scope or course of employment" in Wyoming into possibly very dangerous waters. It further appears to be based on an obscure form of logic dictating that no matter what the law or facts involved are, injured persons should be compensated. It is submitted that if the Wyoming Supreme Court feels this way it should spell out its decision more explicitly on the basis of social or public policy and not law, in order that all can see clearly what has occurred and will occur in the future. The court should not hide behind quoted cases which are clearly not applicable to a set of facts so clearly present as in *Brown*.

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