ADALBERT OBAK, Plaintiff

v.

MIYUKI TULOP and SITO SINGEO, Defendants

Civil Action No. 447

Trial Division of the High Court

Palau District

June 18, 1973

Action for damages. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held bailee of auto for bailee's sole benefit, and intoxicated person bailee allowed to operate the auto, liable for damage resulting from accident which occurred when intoxicated person was driving.

1. **Negligent Driving—Bailed Autos**

   Where owner of auto, and his companions, had been drinking and all but one, who wished to go home, were apparently substantially under the influence, and owner gave the one who wished to go home permission to take the auto, a bailment was created, and where bailee allowed a third companion to drive him home and the third companion had an accident after letting bailee off, the third companion was liable for his negligence and the bailee was liable for negligently allowing an intoxicated person to drive.

2. **Bailments—Duty Owed**

   The duty owed under a bailment for the sole benefit of the bailee is greater than ordinary care.

3. **Torts—Damages—Before and After Value**

   In suit for negligent damage to auto, measure of loss was difference in "before and after" value.

4. **Torts—Damages—Before and After Value**

   In action for negligent damage to 1968 auto which cost $2,200 new and was damaged beyond repair eight months after purchase, $300 salvage value would be deducted from value of auto, as depreciated, at time of accident, even though plaintiff had given the wrecked car away rather than selling it, and damages would be set at $1,100.

5. **Torts—Damages—Temporary Replacements**

   In suit for negligent damage to auto, cost of car rental from time auto was damaged beyond repair to time new one was purchased could not be

recovered, due to rule that there can be no recovery for loss of use when the vehicle cannot be restored.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	JOHN O. NGIRAKED
Counsel for Defendant Tulop:	GILBERT TULOP
Counsel for Defendant Singeo:	FRANCISCO ARMALUUK

TURNER, *Associate Justice*

This was an action for property damages sustained when the 1968 Nissan Cedric four-door sedan automobile, owned jointly by plaintiff and his son, Theodor, was damaged beyond repair when it was rolled over on the road between Meyungs and Koror. The police charged defendant Miyuki Tulop with reckless driving at the time of the accident. He plead guilty to the criminal charge in District Court.

Miyuki was not present at the trial, although it is clear he was told to be present by his father, Gilbert Tulop, Community Court Judge for Koror. Judge Tulop was most reluctant to represent his natural son at the trial because, under Palauan custom, a father assumes responsibility for his son's obligations. That is, they are assumed unless there has been a change in the marital status of the father. When the natural parents have been divorced, the father is no longer liable. This rule was applied to relieve the natural father of liability in a similar case, *Kumaichi v. Omechelong, Omechelong and Martin* (1967), Palau Civil Action No. 358, not reported.

Upon the Court's assurance Gilbert Tulop would not be held liable because of his representation of his son, the trial proceeded in the absence of the defendant Miyuki Tulop.

The circumstances leading up to the destruction of the automobile are relatively simple, with only one major conflict in the testimony to be resolved. The events began in the early evening of July 10, 1969, when four young men began "making the rounds" in Koror. They were Theodor, the owner of the car with his father, the defendant Singeo, the defendant Tulop and Joel. They returned to Obak's home late that night, apparently all of them, except Singeo, substantially under the influence of intoxicating liquor.

After they had eaten, Singeo asked to be driven home and, according to Theodor's testimony, he gave him permission to take the car to his home and return it the following morning. There were other versions of just what the arrangements were. In any event, Singeo did not drive the car but went out of the house and sat in the car until Tulop arrived with the keys to take him home. Singeo was left at his home in Koror, and Tulop, instead of taking the car home, drove to Arakabesang Island, where the accident occurred.

The first question of law to be decided is whether either of the defendants, or both of them are liable.

[1] There would seem to be no question but that Tulop is liable for the damage caused by his negligence. Even in jurisdictions where an owner is liable by statute to a third party for the negligent act of a driver, and even though the driver may be his servant or agent, the liability of the driver to the owner for his tort which results in injury to the owner is not limited. 8 Am. Jur. 2d, *Automobiles and Highway Traffic*, Sec. 570.

Conceded liability of an operator of an automobile, when he is held criminally liable after an accident, is illustrated in *Neton v. Ywelelong*, 5 T.T.R. 300, and *Trust Territory v. Simon*, 5 T.T.R. 524.

The next question is upon what, if any, theory it can be said Singeo also was liable. Tulop definitely *was not*

Singeo's agent after Singeo was deposited at home, because Tulop terminated whatever responsibility Singeo may have had under an agency theory, by going off on a frolic of his own. Thus Singeo may not be held liable as a principal for the negligence of an agent. 3 Am. Jur. 2d, Agency, Sec. 1 et seq.

A much more reasonable theory is that the car owner, by giving Singeo permission to take the car, or in the alternative, have Joel drive him home, became a bailee of the vehicle and became liable for damage due to negligence. The negligence on Singeo's part was entrusting the driving to an intoxicated companion. 8 Am. Jur. 2d, Bailment, Secs. 164 and 202. *Baugh v. Rogers*, 148 P.2d 633.

A very similar set of facts is found in *Baiei v. Bilamang*, 5 T.T.R. 389, 391, in which the court held:—

"When Rafael Bilamang took possession of the vehicle, a bailment was created. True, it was a gratuitous bailment, but, nevertheless, the liability of a bailee is to use due care in the use and custody of the property and to return it in substantially the same condition it was in when the bailee received it."

[2] We believe, and therefore hold, Singeo was negligent in entrusting the car to Tulop under all the circumstances at that time, and is, therefore, also liable for damages resulting, because of the rule that the duty owed for a bailment for the sole benefit of the bailee is greater than ordinary care. 8 Am. Jur. 2d, Bailment, 201 et seq.

[3, 4] In contrast to the facts relating to circumstances of the damage to the car, the evidence relating to the amount of such damage is anything but clear. Plaintiff called a mechanic as a witness as to the value "before and after," which is the measure of loss. The witness had prepared his testimony upon a set of facts not applicable to the circumstances of this case. For example, the mechanic said that with a "careful driver" like the plaintiff Obak,

the vehicle would have a life expectancy of "four to five years" and, at a cost new of $2,200, the value eight months after the purchase date would be one-fifth of the new price, or $1,800. The Court must totally reject this appraisal of value before the accident because the careful driving plaintiff was not the only one who used the car. Plaintiff's son was in at least two minor accidents (all of which reduced the value) before the car was demolished. The friends of Theodor, including Tulop, also from time to time drove the car. None of the four young men were "careful drivers" as the plaintiff was described by his witness. Based upon the witness' factual evidence, and not his conclusions, the Court cannot agree to a value at the time of the accident in excess of $1,400.00.

From this figure must be deducted the salvage value immediately after the accident. The plaintiff gave the car to a relative, who is a scrap dealer. His failure to reduce the loss by the amount of the salvage value—"mitigate damages" it is called in the law—may not increase his recovery. The owner is obliged to recover a fair salvage amount, which is then applied to reduce the value before the accident to arrive at the true measure of loss. Although the plaintiff, in fact, received nothing for salvage, the testimony shows the sum of $300.00 would not have been an unreasonable recovery. The resulting sum of $1,100 is the measure of his loss.

[5] Plaintiff also sought recovery of cost of car rental for two months in the amount of $300 until he purchased a new vehicle. This Court said in the *Neton* case at 5 T.T.R. 304:—

> "However, loss of use, if proven, is recoverable for the period reasonably required for repairs. If the vehicle cannot be restored to use, loss of use may not be included."

We follow this rule in the present case.

Ordered, adjudged and decreed:—

That plaintiff have judgment against the defendants, and each of them, in the sum of $1,100.00. Each defendant is jointly and severally liable to the plaintiff for the full amount of this judgment, but plaintiff may only collect the amount once regardless of whether it is obtained all from one defendant or partly from each defendant.