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decisions in *Varada Ramaswami* v. *Vumma Venkataratnam* (1) and *Ayisa Bivi Ammal* v. *Jokara Bivi* (2) referred to above. If so, the appeal is incompetent.

We are asked also to treat this appeal as a revision petition and deal with it on that basis. To our minds it does not appear that there is any question of jurisdiction involved in this appeal.

We uphold the preliminary objection and dismiss the appeal with costs.

A.S.V.

APPELLATE CIVIL.

1935, August 27.

Before Mr. Justice Cornish and Mr. Justice Varadachariar.

STANES MOTORS, LTD., BY MANAGING DIRECTORS MESSRS T. STANES & CO., LTD. (DEFENDANT), APPELLANT,

v

VINCENT PETER, MINOR BY HIS NEXT FRIEND AND MOTHER MRS. RUTH AARON PETER AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Master and servant—Servant—Negligence of—Accident happening during the course of employment—Servant not strictly carrying out the instructions of master—Fatal Accidents Act (XIII of 1855)—Suit for damages under—Master—Liability of.

D gave instructions to his driver, to take his car to *C* and bring it back after *C* had finished with the same. *C* used the car and asked the driver to bring it back next morning at 8 a.m. The driver took the car later that night on an errand of his own instead of taking it back to *D's* bungalow. The next morning the driver took the car from his house at 7-30 a.m. and went in the direction of *C's* bungalow which was about a mile off. In the course of this journey, on account of his

(1) (1921) 42 M.L.J. 473. (2) (1925) 49 M.L.J. 375.

*Appeal No. 2 of 1935.

negligence, he caused the death of a person. The widow and the son of the deceased filed a suit against *D* to recover compensation under the Fatal Accidents Act.

Held that *D* was liable in damages for the negligence of his driver since, at the time when the accident happened, the driver was in the course of the employment of *D*, and the circumstance that the driver deviated the previous night from the strict instructions of *D* would not relieve the latter of his liability.

Joel v. *Morison*, (1834) 6 Car. & P. 501; 172 E.R. 1338, followed.

APPEAL against the decree of the Court of the Subordinate Judge of Coimbatore in Original Suit No. 139 of 1933 (Original Petition No. 120 of 1932).

S. Doraiswami Ayyar for appellant.

S. Panchapakesa Sastri and *K. R. Krishnaswami Ayyar* for respondents.

THE JUDGMENT of the Court was delivered by CORNISH J.—This appeal arises out of a suit to recover compensation under the Fatal Accidents Act. The plaintiffs are the widow and the infant son of the deceased whose death was caused by the alleged negligence of the appellant's motor-driver, one Babjee. At the time of the accident the car was being driven by a fitter in the employment of the appellants, Babjee being in the car reclining in the back seat. He says he was asleep at the time of the accident and had no knowledge that the fitter was driving the car, until he was aroused by the shock of the impact. This very improbable story has been disbelieved by the lower Court. There can be no doubt that Babjee entrusted the driving of the car to the fitter who was not authorised by his employers to drive their car and who, on his own admission, had no experience as a driver. Indeed the learned

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Counsel for the appellants does not dispute that the accident was due to the negligence of the driver. The substantial question argued is whether the negligent act was committed by the driver while he was in the course of his employment.

The true facts to be derived from the evidence are that the car was taken by the driver to Mr. Catling, a customer of the appellant-firm, whose car was undergoing repairs, on Saturday the 23rd April 1932, and that the instructions of the manager of the appellant-firm, Mr. Dupan, to the driver were that he should bring the car back to Mr. Dupan's bungalow when Mr. Catling had finished with the car. The car was taken at 5-30 p.m. that evening to Mr. Catling and he used it till 9-30 p.m. that night. The lower Court has accepted the driver's story that Mr. Catling told him to bring the car the next morning (Sunday) at eight o'clock. This evidence was not contradicted by any other witness, and the probability is that the story is true. Having finished with Mr. Catling at 9-30 p.m. on Saturday night, the driver took the car back to the appellant's works and drove away with it at about 10 p.m. This is according to the evidence of the watchman. As the works were closed at 6 p.m. the car could not be left there in the garage for the night. The driver went to his house in the car, had his food, and drove off to a drama, returning home at 2 a.m. on Sunday morning. He slept in the car that night. That is the driver's story.

However that may be, one thing is quite clear that on Sunday morning he started off at about 7-30 a.m. in the direction which led to Mr. Catling's bungalow about a mile distant, and that

the accident happened while he was on the way. As already stated the driver was taking the car to Mr. Catling in accordance with his instructions. He ought to have gone to Mr. Dupan's bungalow on the previous night. But the circumstance that he had deviated from the strict order of his master will not relieve the appellants from liability for his negligence if, at the time of the negligent act, he was in the course of his employment.

The rule in such cases has been stated by BARON PARKE in *Joel* v. *Morison*(1) thus :

" If the servants, being on their master's business, took a detour to call upon a friend, the master will be responsible. . . . The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master's implied commands, when driving on his master's business, he will make his master liable ; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable.'

Again, in *Storey* v. *Ashton*(2) COCKBURN L.C.J. says :

" The true rule is that the master is only responsible so long as the servant can be said to be doing the act, in the doing of which he is guilty of negligence, in the course of his employment as servant. I am very far from saying, if the servant when going on his master's business took a somewhat longer road, that owing to this deviation he would cease to be in the employment of the master, so as to divest the latter of all liability ; in such cases, it is a question of degree as to how far the deviation could be considered a separate journey."

In the same case, LUSH J. said :

" The question in all such cases as the present is whether the servant was doing that which the master employed him to do."

In the present case it is a fair inference that when the driver had left Mr. Catling's house he had decided to use the car for his own purpose.

(1) (1834) 6 Car. & P. 501 ; 172 E.R. 1338. (2) (1869) L.R. 4 Q.B. 476.

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The trip to the drama to which he says he treated himself had no relation to his master's business. And, if on the Sunday morning the accident had happened while he was returning in belated obedience to his orders to Mr. Dupan's bungalow, we think that it could not have been held to have occurred in the course of his employment. The expedition would have been from first to last solely for the driver's own purpose. And the case would have stood on the same footing as *Mitchell* v. *Crasswelle*r(1) and *Rayner* v. *Mitchell*(2). But we are satisfied that on Sunday morning the driver was taking the car to Mr. Catling in pursuance of his overnight instructions. And that was in the scope of his employment, because, Mr. Dupan has stated in his evidence that the driver had instructions to attend to Mr. Catling. It can make no difference that the driver, for his own convenience and in deviation from his orders, had started from his home instead of starting from Mr. Dupan's bungalow, because the errand that he was then on was connected with his master's business and accordingly within the scope of his employment.

For these reasons we are of opinion that the negligent act was committed by the driver in the course of his employment. It follows that the appellants are liable for their servant's act.

There remains the question of damages. Under the Act the suit is to be for the benefit of a wife, husband, parent and child. The learned Judge in the Court below has awarded Rs. 1,500 to the mother of the deceased and Rs. 3,000 each to the widow and child. The rule is that the damages must be fixed solely with reference to the pecuniary

(1) (1853) 13 C.B. 237. (2) (1877) 2 C.P.D. 357.

loss sustained by the relatives of the deceased in respect of past contributions or in respect of reasonable expectation of future pecuniary benefit from the deceased. The plaintiff must adduce evidence affording a reasonable basis for the ascertainment of the pecuniary loss so inflicted ; see *Barnett* v. *Cohen*(1). The mother has adduced no such evidence. There is no proof that she has suffered pecuniary loss in consequence of the death of the deceased. Consequently the award of compensation to her cannot stand.

With regard to the widow and child no sufficient reason has been shown why we should interfere with the amount awarded. There is evidence that the deceased was a skilled mechanic capable of earning Rs. 90 or Rs. 100 a month. In these circumstances it seems to us that the income which is likely to be obtained from the capital amount awarded by the Court below is not an unreasonable amount of compensation.

For these reasons the amount of total compensation awarded will be reduced to Rs. 6,000 payable to the widow and the child and the appeal in other respects will be dismissed with costs.

With regard to the memorandum of objections that interest at six per cent ought to have been allowed on the decree amount, we allow interest at the rate of six per cent per annum on the amount of compensation, namely, Rs. 6,000, from the date of the lower Court's decree. There will be no order as to costs on the memorandum of objections.

Solicitors for appellant : *King & Partridge.*

G.R.

(1) [1921] 2 K.B. 461.