CALCUTTA HIGH COURT

Nalini Ranjan Sen Gupta

Vs

The Corporation of Calcutta

(Hugh Walmsley, J.)

26.02.1925

JUDGMENT

Hugh Walmsley, J.

1. The petitioner has been held liable for damage caused to a lamp post by his motorcar. It is found by the learned Judge that the car was taken out by a chauffeur, that the cleaner accompanied him, that the chauffeur stopped the car when lie came to an obstruction, that he left the car in charge of the cleaner while he went to a shop on business, arid that while he was absent the cleaner put the car in. motion and brought it into collision with the lamp post. The defendant's statement that the cleaner was employed only to clean the car, and had been forbidden to drive it, has been accepted.

2. It is clear that the master is not liable merely on the ground that the cleaner was his servant, for the reason that driving the car lay outside the scope of the cleaner's employment. The learned Judge does not rest his conclusion on that ground; he holds that the chauffeur was negligent in allowing to the cleaner the chance to drive the car; and in taking this view he relies on, the. decision in the case of *Engelhart v. Farrant*[1]. The rule stated in that decision is, that the master is liable for the. negligence of the servant if that negligence is an effective cause of the damage. That rule is well established, but in this case as in that the difficulty lies in applying the rule to' the facts. The learned Judge appears to think that the facts of this case are so similar to those of that case that the rule may be applied without further consideration. That case, however, as Lord Bsher, M.R. remarked, was on the borderline, and it would, therefore, be dangerous to rely upon inference from similarity. What is necessary in this case is to determine whether the chauffeur was in fact negligent in leaving the car in charge of the cleaner and, if he was, whether that negligence was an effective cause of the accident. A motorcar with the engine at rest is a very different thing from a horse-drawn van with the reins attached to a hook, and a much larger measure of interference is needed to put. it in motion. Unless we can say that the chauffeur ought to have anticipated that the cleaner would try to drive the car, I do not think that he can be held guilty of negligence. It is easy to imagine facts which would warrant such a finding but those facts must not be assumed without evidence. In this case I do not think that the necessary facts have been proved, so I hold that the chauffeur cannot be regarded as negligent. It follows that the master is not liable, and that the Rule must be made absolute, and the judgment, and decree of the lower Court set aside, the suit being dismissed with costs in both Courts, hearing fee in this

Court one gold mohur.
Cases Referred.

[1](1897) 1 Q.B. 240 : 66 L.J.Q.B. 122 : 75 L.T. 617 : 45 W.R. 179