1973

Luke Phillips And Ruby Phillips v. Tooele City Corporation : Appellant's Brief

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THE SUPREME COURT OF THE STATE OF UTAH

KE PHILLIPS AND
UBY PHILLIPS

Plaintiff - Appellants

vs.

OELE CITY CORPORATION

Defendant-Respondent

CASE NO. 12740

APPELLANT'S BRIEF

ATEMENT OF THE NATURE OF THE CASE

Appellants brought this action for damages ainst the respondent for the amount of $2,413.91 edicated upon the respondent's agents negligence a collision, occurring in Tooele City, State Utah, on December 18, 1970.

DISPOSITION IN THE LOWER COURT

This matter was tried to a jury on September 1971, and judgment of non-suit was entered.

upon the respondent's motion to dismiss after appellants had rested their case in chief. The Court Judge Gordon P. Hall having directed a judgment in favor of the respondent on the grounds of contributory negligence.

RELIEF SOUGHT ON APPEAL

Appellants request this court to set aside this judgment of non-suit.

STATEMENT OF FACTS

Phyllis Utahna Perkins was driving the appellants Ford, Maverick west on Utah Avenue in the proximity of its intersection with 5th Street December 18, 1970 (T-4). The road was completely covered with snow (T36-L28) and as driver approached 5th Street she observed respondents garbage Truck (T-4 L-23) stopped to the north of the curb line facing south. Mrs. Perkins proceeded westerly believing that the garbage truck had yielded the right-of-way and when she was over

half way through the intersection in the north-west quarter of the intersection, respondents agent, driver of the garbage truck having failed to look to the left before entering the intersection (T-38) and drove the garbage truck into the right front quarter of the appellants vehicle. The point of impact being approximately 24 inches behind the right front headlight (T-24). The accident occurring in the north-west quarter corner of the intersection (T-17). The force o the garbage truck colliding with appellants vehicle pushed appellants vehicle into the south-west quarter corner of the intersection (T-17). The impact causing damages to the appellants vehicle in the amount of $ 2,413.91 which included front fender, grill, headlight, bent hood, upper railing of the front sub-frame, connecting brace on the fire wall, a cross to the sub-frame, shock tower, superficial skin damage, tires, (T-25). Substantially causing a total loss damage to appellants vehicle

which was seven months old at the time respondent broadsided appellants vehicle.

There was no damage sustained by the respondent.

Mrs. Perkins is appellant's Ruby Phillips daughter and was age 16 at the time of the collision and was married at the time appellant Ruby Phillips had signed the drivers license application (T-13). Appellants Luke Phillips had purchased the Maverick on May 27, 1970. He was not the father of Mrs. Perkins (T-42) he had not signed the drivers license application (T-13) and had not given Mrs. Perkins permission to drive the vehicle. (T-43).

ARGUMENT

Point 1

THE SUPREME COURT, IN REVIEWING THE JUDGMENT IN THIS CASE, MUST VIEW THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE APPELLANT.

Point 1

In cases such as the instant appeal wherein he trial Judge entered judgment of non-suit pon the close of the Plaintiff's case, the urts have uniformly held that in reviewing a dgment of non-suit the evidence must be viewed d reasonable inferences drawn therefrom in a ght most favorable to the plaintiff. Raymond Union Pac. Railroad Co., 113, U. 26, 191 P. 2d 7 (1948); Knox v. Snow, 119 U. 522, 229 P 2d 4 (1951).

In Martin v. Stevens, 121 Utah 484, 243 P. 747, (1952) the Court stated:

> In appraising the dismissal which was granted against plaintiff, he is entitled to have us review all of the evidence, together with every logical inference which may fairly be drawn therefrom in the light most favorable to him.

Following this established principal, the Utah urt in Malstorm v. Olsen, 16 Utah 2d 316, 400 2d 209, (1965) said:

> We reverse non-suit judgments if there is a reasonable basis in the evidence and the inferences therefrom when considered in a

light most favorable to the losing party (plaintiff) for a judgment in her favor.

We submit in view of the foregoing, that this Court must view the evidence in this appeal in a light most favorable to the Plaintiffs and must engage in all inferences which may be drawn from the evidence in favor of the Plaintiffs and must engage in all inferences which may be drawn from the evidence in favor of the plaintiffs.

POINT 11

THE TRIAL JUDGE MISINTERPRETED THE TESTIMONY OF DRIVER OF APPELLANT'S VEHICLE.

Announcing the decision of Defendant's Motion to Dismiss, Judge Hall stated:

> "The Court cannot disregard the direct testimony of Mrs. Perkins which indicates that she did observe the truck some two hundred to two hundred fifty feet away, that's the note that I had. And then did not see the vehicle again until the collision, which in the Court's view would deem her to be guilty of contributory negligence."

No where in the direct testimony of Mrs. Perkins did the witness ever state that she

observed the truck some two hundred to two hundred and fifty feet away. The Testimony of the witness revealed the following facts as to her viewing the garbage truck. When asked what she observed the witness answered:

A. (T 4-L 22) On Utah Avenue, and I seen the garbage truck, but I seen that it was stopped.

Q. Where did you see the garbage truck?

A. On 5th Street

Q. And on which side of the street?

A. The right.

On cross examination the witness stated:

(T-15 L-3) I see the truck. I seen it back further, but I seen that it was stopped and I was going slow enough. I proceeded to go through and after I got past where he was, he came out and...

Q. How far back would you say you were when you saw the truck.... how far back from the east side of this intersection (L 9-10)

A. (T-15 L-15) About a half a block.

On redirect, the witness was asked: (T-20 L-11).

Do you know how long those blocks are?

I don't know how long they are.

You know how many houses would be on a block?

Four

Only four houses to each block?

Yes

Then it's your testimony then that when you first saw the truck you were about two houses back from the corner.

Yes

Testimony which the Trial Judge relied upon was not the direct testimony of the witness, Mrs. Perkins, but was from the testimony of Howard E. Cooper, on cross examination by the Defendants Counsel, (T-36-L-13) I asked her how far back she was. She indicated a point back in the road.which I estimated, around two hundred to two hundred fifty feet.

Thus, the Courts opinion was based upon the timate of the witness and not upon the drivers stimony. Judge Hall also erred in concluding at the witness's testimony was that she "did t see the vehicle again until the collision."

Examination of the Transcript of the cross amination of this witness indicates that the nclusion of the Trial Judge was taken from the

direct question of the Respondent's Attorney, which was a compound question as follows:

Q. O.K. About a half a block, and your prior testimony was i think, if I recall it correctly, was that you saw the truck in that position and that you then continued on and you didn't see it again, or didn't - wasn't aware of it until it was out in the street in front of you, is that correct? (T-15)

Obviously the witness could not have answered accurately the question proponded, and parts of the answer were clearified by the following: (T-16 L-2)

Q. O.K. and then you just continued on. The next time you observed it, when it was in front of you, when it collided?

A. When it was at the side of me.

The Driver further testified on Cross Examination (T-18 L-14)

Q. Well, did you see it, and what it did?

A. I seen it come out and hit me, but it just come all of a sudden.

This testimony is substantiated by the Witness, Doyle Roy Rolley, a passenger in the

ssenger vehicle, who reported his observations
s follows:

> "Oh, well, we was just going down that one road and then we were almost in the middle of the intersection and the garbage truck came out of the side and I shut my eyes that's all. (T-41 L-2)

Concluding that the driver of the Plaintiff's ehicle did not see the garbage truck again until he collision, the Court erred in his decision hat the driver was guilty of contributory egligence as a matter of law.

Justice Crockett, in analyzing the observations ecessary in approaching an intersection in the pinion of Martin v. Stevens, 121 Utah 484, 496, 43 P. 2d 747, (1952), stated:

> We must remember that there were three other streets to give some attention to as he approached the intersection. All of the attention could not very well or safely be focused on any one at any given instant.

In this case, the driver of the Plaintiff's ehicle observed the Defendant's garbage truck topped north of the Intersection, at a point hich is North of a dip or extension of the utter across the road way running parallel

to the Avenue upon which the plaintiff's vehicle was travelling. Having observed the truck stopped, it became the duty of the driver of plaintiff's automobile to divide her attention to the possible traffic from the left and straight ahead.

The question of observation of the driver the plaintiff's vehicle, having observed the ck stopped, and presumed that the defendant's ck had yielded at the entry into the larger nue from the intersecting street, was necessarily sed also upon the snow covered, slick surface he roadway of Utah Avenue.

The Court, in the above cited case of Martin tevens, in asserting that such evidence should eighed by the Jury also called attention to question of proximate cause as a Jury question.

Should we assume that all reasonable men must conclude that plaintiff's failure to keep more of a lookout to the east amounted to negligence, would they also all agree that such failure to observe proximately caused the collision?

Apparently the Trial Judge heard certain
idence, which he believed to have been from
e direct testimony of the plaintiff's witness,
ght men were impannelled to hear the facts
n this matter, and among these Jurors, a mis-
nterpretation of the testimony could have been
learified by discussion. That the function
f the Jury is to be the trier of the facts, is
ot disputed, and Appellants having established
prima facia case of negligence against the
river of the Defendant's vehicle, and no
vidence having been disputed that the Driver of
arbage truck was the servant of the defendant,
nd that he was at the time and place of said
ccident, acting within the scope of his employment,
aid negligence of the employee was imputed to the
mployer, Tooele City Corporation, and the
ppellants were entitled to have the burden of
rooving contributory negligence rest upon the
Defendant, and then submitted to the Jury for
deliberation.

POINT III

RIBUTORY NEGLIGENCE IS AN ISSUE TO
TERMINED BY THE JURY AS THE TRIER OF
S

iling opinion of the Surpreme Court of the
e of Utah as to the issue of contributory
igence is set forth in Hughes v. Hooper, 19
2d 389, 431 P. 2d 983 (1967) an action which
lved an open intersection collision. The
t therein stated:

> The rights and duties of drivers approaching intersections are questions dealing with the standard of conduct to be expected of a reasonably prudent man and are peculiarly a matter for the jury. Contributory negligence is therefore preimarily to be resolved by the trier of the facts since it involves these same rights and duties. It is not to be treated as one of law unless the facts and inferences from them are free from doubt. If there is doubt, the issue is for the jury.

mith v. Thorton, 23 Utah 2d 110, 458 P. 2d 870,
9) the Court reversed a directed verdict in
r of the defendants entered upon the ground
t "the plaintiff was guilty of contributory
igence as a matter of law."

Court therein stated:

> The defendant has the burden of proving that the plaintiff . . . was negligent and that his negligence was the proximate cause of his injuries. Both of these issues must be proven by a preponderance of the evidence.

Consequently, if there is any reasonable basis in the evidence, or from lack of evidence, upon which jurors could reasonably remain inconvinced on either issue, the court is not justified in taking the case from the jury.

he instant matter, the Court entered the

owing findings of fact #4.

As the driver of Plaintiff's vehicle was approaching the intersection of 5th street and Utah Avenue, approximately 200 to 250 feet or one half block from said intersection, said driver observed the Defendant's garbage truck stopped at the north edge of said intersection with the left side of said vehicle near the center of 5th street, and that said driver did not observe said truck thereafter until just as it pulled out into the intersection in front of her and that she had no opportunity to apply her brakes prior to said collision and that there were no other vehicles on the roadway nor any other obstructions of her vision of said truck from the time she first saw it until the collision.

cording to the findings above quoted, the jury ld reasonably find that Defendant's driver had ved his right to the right of way by stopping he entrance to the open intersection, and having ved his right had no right to enter the intersec- n from a stopped position without ascertaining ther traffic was approaching from the drivers t, and that the acts of the defendant's driver e the sole proximate cause of the collision.

The above findings of fact were erroneous, uch as the evidence offered by all of the sses, including the investigating officer, ly showed that the Defendant's vehicle struck ide of the car owned by Plaintiff;s and that point of impact was to the rear of the right t wheel of the Plaintiff's vehicle, and there- the finding that driver of Plaintiff's auto- le did not see the truck "until just as it ed out into the interscction in front of her" ot in compliance with any evidence, including ographic evidence offered in the Plaintiffs .

In Hindmarsh V.O.P. Skaggs Foodliner, 21 Utah 3, 446 P. 2d 410, ( ) the court said:

> The burden of proving contributory negligence is upon the defendant. The trial court could properly take the issue from the jury and rule that the Plaintiff was contributorily negligent as a matter of loaw only if the evidence demonstrated that fact with sufficient certainty that all reasonable minds would so find. Conversely, if the evidence is such as to permit reasonable minds to differ as to whether the plaintiff was guilty of contributory negligence, the question is for the jury to decide.

Under a fact situation similar to the instant er, the Court in Williams v. Zions Cooperative

antile Institution, 6 Utah 2d 283, 312 P.
4, (1957) stated that the "plaintiff was
way through the intersection she was struck
efendant's truck. The front end of defendant's
struck the car driven by plaintiff on the
t door and near the car's center . . . on
e facts the court held plaintiff contributorily
igent as a matter of law."

rsing the decision of the lower Court and

s Court stated:

A fact question was presented as to whether
ndant entered the intersection when plaintiff
therein, or if defendant entered the intersec-
n when plaintiff was approaching so closely on
through highway as to constitute an immediate
rd. The further fact question was presented as
whether defendant had entered the intersection
r such circumstances as to impose on plaintiff
duly to yielding the right of way.

Those are proper jury questions and should
been submitted.

In the instant matter, the questions which
uld properly have been submitted to the jury were:

1. If the defendant's driver had the right
way pursuant to Utah Code Anno. (1953) 41-6-72(b)
the defendant's driver waive the favored position
the driver approaching an intersection from the
ht, when the said driver was stopped at the inter-
tion?

2. Was the proximate cause of the accident
failure of the Defendant's driver to look to

the left before entering the intersection
r having been stopped at the entrance thereto.

3. At what point did Plaintiff's driver
ually observe the defendants truck stopped?
re being two discriptions of the distance,
being 200 to 250 feet testified to by the
icer, the other being in the middle of the block
ch block consisted of only four residential
lding lots, placing the driver of Plaintiff's
omobile approximately 150 feet east of the
ersection.

4. Does the driver of an automobile have
duty to continue to observe the actions of a
ver who has apparently yielded the right of
, or must the attention of the driver then focus
the left before entering the intersection to
ertain whether traffic is approaching from
t direction?

5. Does Utah Avenue, being a wider avenue,
10 feet in width, than the intersecting street
5th Street, and the construction of the respec-
ve roads, Utah Avenue being constructed without

dips or gutters crossing the payment from street to Broadway; 5th street having a dip gutter area crossing the payment necessitating traffic approaching Utah Avenue from the North, slow before entering the larger Avenue, transfer right of way to the traveler on the through eet, even in the absence of regulatory divices commonly used: ie, signs or semaphores?

Utah Code Anno. (1953) 41-6-74, provides:
(a) The driver of a vehicle shall stop as required by this act at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said highway as to constitute an immediate hazard. . .

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected. . .

A clear reading of the Act indicates that Legislative intent is to provide for through hway traffic without each intersection being ted with a stop sign or other regulatory divices.

The use of dips or of"bumps" across the pave- of roads being effectively employed for the poses of curtailing the movement of traffic lieu of signs.

6. Was the Plaintiff's vehicle actually within the intersection at the time the Defendant's vehicle approached and entered the intersection.

In Bates v. Burns, 3 Utah 2d 180, 281 P. 2d 209 (1955) the Court stated.

Plaintiff not only entered the intersection first, he had nearly passed over it before the defendant entered. Plaintiff was the disfavored driver until he had entered the intersection at a time when no car traveling the through highway had entered the intersection or was approaching so closely on said through highway as to constitute an immediate hazard. But having entered as authorized, he became the favored driver and all other vehicles approaching the intersection on said through highway were obliged to yield the right of way to him.

In the above cited case the driver of a pick up truck was not held contributorily negligent where the facts showed that the disfavored driver entering the intersection from the left of the defendants truck, did not observe the defendants truck again until immediately before the defendant s truck collided with the side of Plaintiff's vehicle.

Under the holdings of the Supreme Court of the State of Utah, the issue of Contributory Negligence was certainly an issue for the jury.

As stated in Martin v. Stevens, 121 Utah 484, P2nd 747 , (1952) 489.

The question of contributoy negligence is usually for the jury and the court should be reluctant to take consideration of this question of fact from it. Nielson v. Mauchley , 115 Utah 68, 202 P. 2d 547, Toomer's Estate v. Union Pacific Railroad Co. 121 Utah 37, 37, 239 P. 2d 163. The expressions in those cases are in accord with this uniformly accepted doctrine. The right to trial by jury should be safeguarded. Before the issue of contributory negligence may be taken from the jury, the defendants' burden of proving both (a) that plaintiff was guilty of contributory negligence proximately contributed to cause his own injury, must be met, and established with such certainty that reasonable minds could not find to the contrary, conversely, if there is any reasonable basis, either because of lack of evidence, or from the evidence and the fair inferences arising therefrom, taken in the light most favorable to plaintiff, upon which reasonable minds may conclude that they are not convinced by a preponderance of the evidence either (a) or (b) that such negligence proximately contributed to cause the injury, the plaintiff

entitled to have the question submitted to
ury.

POINT IV

OWNER OF A VEHICLE WHICH IS DAMAGED BY THE CURRING ACTS OF TWO NEGLIGENT DRIVERS, MAY OVER HIS DAMAGES FROM EITHER OR BOTH SUCH LIGENT PERSONS.

In Caperon v. Tuttle, 100 Utah 476, 116 P. 402 (1941) the Court stated:

The cases are numerous which had that if uries result from a collision, the proximate ses of which are the concurring, negligent acts the driver and a 3rd person, recovery may be d against either or both of such negligent sons. (citations omitted)

The holding of the Court above was also lied in the case of Dawson v. Board of Educa- n of Weber County, State of Utah, 222 P. 2nd ; ( ), wherein the Court said:

Having a single cause of action against more n one tort feasor, an injured party may proceed inst the wrong doers either jointly or severally he may recover judgment or judgments against or all, but he can have put one satisfaction the cause of action. . .

This rule was applied as the law of Utah in 10th Circuit, Court, United States v. First urity Bank, 208 F 2d 424, (1953):

> The negligence of one person cannot be justified by the concurring negligence of another. Where several causes producing an injury are concurrent, and each is an efficient proximate cause, without which the injury would not have occurred, the injury may be attributed to all or any of the causes... If the acts constituted negligence both Vernon and Mardis were responsible, and the plaintiffs could proceed against one or both of them. McKenna v. Scott 10 Cir., 202 F 2d 23, McClave v. Moulton 10 Cir., 123 F 2d 450. This is the rule in Utah.

The rule has been long established in this isdiction, in Jackson v. Utah Transit Company, Utah 21, 290 P. 970 (1930) the Court found that was immaterial, so far as the Plaintiff was cerned if the driver of the Plaintiffs omobile was negligent in any act of driving, the negligence of the driver could not prevent plaintiff from recovering from the defendant.

Relative to the above issues is the stion:

May a joint owner of a vehicle recover loss tained to his vehicle from a collision in which joint owner and a third person are contributorily

ligent?

From the discussion above, it is clear that owner, or an injured party not the driver of a icle involved in a collision, may recover from her of two wrong doers. The issue of Joint ership of a vehicle does not create a different e when the joint owner is not present in the omobile at the time of the collision.

In Conklin et al v. Walsh et al, 113 Utah , 193 P. 2d 437, (1948)

> An action by Clifford E. Conklin...to recover for damages to named plaintiff's automobile resulting from a collision with the defendants company's truck, wherein the defendant filed a cross complaint. Judgment from the named plaintiff and the defendant appealed. Judgment affirmed.

In this action Mrs. Conklin was driving the ily automobile and the husband recovered the unt of damages, which constituted the deductible tion of an automobile collision insurance policy, m the defendants who were guilty of contributory gligence in an intersection collision with the aintiffs vehicle which Plaintiffs wife was iving.

The Court stated: There is no presumption of agency between husband and wife in the operation of an automobile merely because of the marriage relationship has been fully decided by this court in the case of Fox v. Lavender, 89 Utah 115, 56 P. 2d 1048.

A distinction has been made by the Court in tions involving the joint ownership of vehicles which the joint owners are both present in the tomobile at the time of a collision. This rule d distinction drawn therefrom with the above se is best summarized by the 10th Circuit case W. W. Clyde & Company v. Dyes, 126 F 2d 723, follows:

It is the law in Utah that where joint owners of an automobile are traveling together in it at the time of an accident with resulting injury or damage, it will be presumed that they have joint right of control and therefore that the driver is operating it on behalf of himself and the other present owner or owners. Fox v. Lavender 89 U 115, 56 P 2d 1049; Nielsen v. Watanabe, 90 Utah 401, 62 P. 2d 117.

The Court, however did not follow the above neral rule as it stated:

Under the agreed facts the status of plaintiff (wife) was that of guest or invitee without Voice or control over the automobile. Jackson v. Utah Rapid Transit Co. 77 U. 21, 290 P. 970. Raille v. Smith 81 U. 179, 17 P 2d 224, Caperon v. Tuttle 100 U 476. 116 P 2d 402 (1941)

If Mrs. Perkins was contributorily negligence, actions cannot bar the recovery of the Plaintiff's ages from the Defendant.

POINT V:

AH CODE ANNO. 41-2-10 CANNOT IMPUTE CONTRIBUTORY LIGENCE OF THE MINOR TO THE OWNER IN AN ACTION OUGHT BY THE OWNER AGAINST AN ALLEGED NEGLIGENT IRD PARTY.

> U.C.A. 41-2-10 (b) states as follows: Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, such minor for any damages caused by such negligence or willfull misconduct.

As we have previously explored, a husband not stopped from collecting damages from one or re joint tort feasors where his wife is contri- itorily negligent in the distruction of his, or heir property.

Utah law prohibits a spouse from suit against nother spouse in Tort. Therefore a spouse suff- ring damages which are concurrently cuased from he joint acts of the spouse and a third person, oes not possess the right to bring an action gainst either of the wrongdoers, and in order to

:over for damages not caused by his negligence, ;t pursue his remedy against the third party.

If the contributory negligence of the minor, ier the age of 18, is imputed to the person who gned the drivers license, then in the instant se the co-plaintiff Luke Phillips would have e right to recover from the negligent driver of s vehicle, were it not for the imputed negligence virture of the statute, making the joint tort- asor liable to the Plaintiff his spouse.

There have been no Utah cases in point of is issue, Prosser 3rd Sec 73 states:

> The result at which the courts have arrived is that the plaintiff will never be barred from recovery by the negligence of a 3rd person unless the relation between them is such that the plaintiff would be vicariously liable as a defendant to another who might be injured.

Appellant Luke Phillips could not have been ld liable under the provisions of 41-2-10 U.C.A. 953) for any negligent act of the driver Phillis tahna Perkins, had her negligence caused any mage to the Defendants garbage truck. It llows that if he could not have been held liable a defendant, then his recovery as a plaintiff

uld not be denied.

The Maine Supreme Court in York v. Day's Inc.) Atlantic 2d 730, Maine, (1958) had an opportity to examine into the extension of imputed gligence of a minor driver. The Supreme Court ld that a statute providing that every owner of motor vehicle permitting a minor under 18 years age to operate it upon a highway shall be intly and severally liable with such minor r any damages caused by negligence of minor, d not preclude the owner of a motor vehicle who d permitted a minor under the age of 18 years to erate it upon a highway from recovering damages om a negligent third party, who with the minor intly caused the damage to the owners vehicle. he Court therein stated:

> The notable words of the act, of primary ment here are: "Shall be jointly and severally iable with such minor for any damages caused the negligence of such minor in operating uch vehicle."

The phrase, "liable with such minor," ccepted for the familar and commonplace language hich it is connotes a legal responsibility and ccountability of the bailor with the bailee to

ird persons. It has never been customary or nventional usuage to allude to a person as being able to himself in expounding that he cannot re- ver from others for his damages but must defray s own losses. . . . The expression, "any damages used," is very inclusive but pertains to damages third parties rather than to the bailor or his attel if read within their context. Had the gislature in reality addressed its thought and forts to imputing contributory negligence to the ilor the appropriate wording would have been adily forthcoming.

Refering to the Restatement of Torts the Maine urt quoted the following:

In the Restatement of the Law, Torts, Negligence c. 485 we find:

Comment on Caveat:"

b. A statute may make the owner of an automo- ile liable for any harm done to others by the nner in which it is driven by any person whom he owner permits to drive it. The Caveat leaves pen the question whether the effect of such a tatute is to create a universally applicable icarious responsibility and, therefore, to make he negligence of such bailee a bar to recovery y the owner for harm to him or the car. The uestion is one of statutory construction, if he purpose of the statute is to give to persons njured by the negligent operation of automobiles n approximate certainty of an effective recovery y making the registered owner, who is required to ake out insurance to cover his liability or who s likely to do so, responsible as well as the ossible or probable irresponsible person whom he owner permits to drive car, the statute does ot make the drivers contributory negligence a ar to the owner's recovery for harm done to the ar by the negligence of a third person."

This question has been also considered by the Superior Court of Delaware, in Westergren et al. v. King, 99 A 2d 356 (1953)

The Court's opinion state:

Our statute is silent with respect to the imputation of the negligence of the minor to an owner who sues a third person to recover damages sustained by the owner as a result of a collision due to the third person's negligence. Thus, the question is presented: Does the statute making the owner of an automobile liable for the negligence of a minor driving the automobile for his own purposes and with the consent of the owner impute the minor's contributory negligence to the owner where the owner sues a negligent third person to recover damages sustained by him? In otherwords, does the language employed not only make the owner liable to third persons for the minor's negligence, but, also, at the same time, preclude the owner from recovering against negligent third persons where the recovering against negligent third persons where the minor has been guilty of contributory negligence?

Concluding that the contributory negligence of a minor could not be imputed to the owner of an automobile to bar the owners recovery from third parties, the Court Stated:

In my opinion the provisions of Section 72 have not altered or changed in any fashion the common law rule respecting an owner's right to recovery from a negligent third person under circumstances such as disclosed in the present case. The imputation of a minor's negligence to an owner under this statute is applicable

nly in actions brought by a third person gainst the owner. The statute cannot be nvoked for the purpose of imputing the ontributory negligence of the minor to the wner in an action brought by the owner gainst an alleged negligent third party.

A fortiori, In the instant matter, the efendant's suffered no physical damage to he Garbage Truck, they did not file a claim or damages and did not counterclaim in the resent suit.

CONCLUSION

Appellants submit that the issue of ontributory Negligence of the driver of the laintiffs vehicle should have been a jury uestion; that regardless of the contributory egligence of a non-owner driver, the owner has right to recovery from either negligent party s joint tortfeasors, That Utah Law specifically as upheld a Plaintiffs claims against a negligent hird party for damages sustained by Plaintiff s the result of concurring acts of negligence n the part of the Plaintiff's spouse and a hird party where such spouse-Plaintiff is not

passenger in the automobile; that recovery had been denied to a joint-owner spouse by the Utah Courts only where both husband and wife were in the accident; that the statutory imputation of liability of a person who signs the drivers license for a minor under the age of 18, is not applicable to bar an owner for recovery of their damages from third persons contibutorily negligence; that this court should adopt the view set forth by the Maine and Delaware Courts and adopted by the Restatement of Torts.

Respectfully submitted:

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