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LLOYD'S LIST LAW REPORTS

Edited by H. P. HENLEY

Of the Middle Temple, Barrister-at-Law

Vol. 82. No. 1.]

FRIDAY, NOVEMBER 26, 1948.

[By SUBSCRIPTION

COURT OF APPEAL.

Oct. 13 and 14, 1948.

ORR v. TRAFALGAR INSURANCE COMPANY, LTD.

Before Lord Justice TUCKER, Lord
Justice ASQUITH and Lord Justice
SINGLETON.

Motor insurance—Private hire—Implied hiring—Personal injuries sustained by plaintiff in motor accident—Plaintiff knocked down by car driven by P. (insured by defendant insurance company)—Indemnity limited to use for "Private purposes only"—Exclusion from liability when being used for "private or public hire"—G. (carrying on private hire business) telephoned by M. requesting car to pick him up at Liverpool dock and take him to railway station—G.'s car out of commission—P. (at the time on a visit to G., and whose car was outside) requested by G. to execute commission—M. picked up by P.—Plaintiff knocked down on way to station—G. informed of accident by P.—M. subsequently picked up by G. and journey completed, but too late to catch train—No express mention made of payment for hire—No hire paid—Judgment recovered by plaintiff against P. unsatisfied—Claim for indemnity under policy refused by PRITCHARD, J.—Whether P. at time of accident was engaged in "private hire"—Inference to be drawn from conduct of parties.

Held, by C.A., that although no express mention was made of any payment for hire, there was to be implied from the conduct of the parties an implied promise by M. to pay either P. or G. for the journey to the railway station; that the learned Judge was

justified in drawing the inference that P.'s car at the time of the accident was being used for "private hire"; and that therefore his Lordship was right in holding that plaintiff was disentitled to recover under the policy—Decision of PRITCHARD, J., upheld.

This was an appeal by the plaintiff, Mr. Joseph Orr, of Princes Walk, Great Howard Street, Liverpool, from a decision of Mr. Justice Pritchard, at Liverpool Assizes, dismissing his action against the Trafalgar Insurance Company, Ltd., from whom he sought to recover the amount of a judgment awarded to him in respect of personal injuries sustained on June 8, 1946, through being knocked down in Liverpool by a motor car driven by Mr. Harold Prescott, who was insured under a policy issued by the defendant company. The defendant company denied liability, contending that at the time of the accident the car was being used for private hire, which was excluded by the terms of the policy.

The policy provided as follows:

INDEMNITY.

The company hereby agrees subject to the terms, exclusions and conditions herein or included in the schedule hereto and provided the insured duly observes such conditions and fulfils his obligations thereunder, which observation and fulfilment shall be a condition precedent to the rights of the insured to recover hereunder

To indemnify the insured against loss or damage or liability as hereinafter stated but only in so far as specified in the schedule hereto and during the period stated therein, in respect of the private car described in the schedule and hereinafter called the "Car" whilst such car is in his custody or control and is being used solely for the purpose or purposes warranted in the schedule . . .

C.A.]

Orr v. Trafalgar Insurance Company, Ltd.

[C.A.]

According to the schedule the "Limitations and Warranty as to use of vehicle" were described as "Private purposes only."

The company agreed to indemnify the insured

against legal liability (including law costs of any claimant awarded taxed or agreed) which may be incurred in respect of the death of or bodily injury to any person (not being the driver of the car or a person being carried in or upon or entering or getting on to or alighting from the car) caused by or arising out of the use of the car on a road . . .

A note printed on the policy provided:

For the purposes of this policy the term "Private Purposes" means social domestic and pleasure purposes and use by the insured in person travelling to and from his permanent place of business.

The policy also provided:

The indemnity is subject to the following:—

EXCLUSIONS.

(d) Loss, damage and/or liability caused or arising whilst any such car is . . . being used for private or public hire or in any way contrary to the terms and conditions of this policy.

According to the facts found by Mr. Justice Pritchard, Prescott was intending to change his trade and carry on a private hire business, but his licence to do so had not yet been granted on June 7, 1946, when in the late evening he was in the house of a Mr. Gallagher, who did in fact carry on a private hire business. At midnight, Gallagher was called up on the telephone by a Mr. Moore, who had got Gallagher's number from the telephone operator, and he asked Gallagher to send a car to pick him up at a named point and take him from there to Lime Street Station, where he desired to catch a train. Mr. Gallagher's car had a puncture, so he asked Prescott whether he would be kind enough to do the job for him. Moore said in evidence that he expected a car in about ten minutes and that after he had been waiting for twenty minutes he saw a car coming and he beckoned to it, his idea being to "hitch-hike" into Lime Street Station. His Lordship continued:

"At that time I do not think Moore knew one way or the other whether that

car was coming from Gallagher's garage or not, but it was a motor car, it was transport, and he had a train to catch, and he beckoned to it. It drew up and he got into it, and I am satisfied that in some way or other he was then told that it was in fact the car he had ordered. As far as he was concerned, of course, it was, and he went into the car.

"On the way to Lime Street the car knocked down the plaintiff in this action, and the journey was interrupted. Mr. Prescott's first action then was to ring up Gallagher, and I attach some importance to the fact that Prescott's first action was to ring up Gallagher. If this journey was an entirely private journey, being taken by Prescott out of the goodness of his heart, I do not see why he rang up Gallagher. As far as he knew, Gallagher's car would not move that night, and there was no earthly point in ringing up a man who by that time would—in all probability must—have gone to bed and tell him that he had had an accident. The only object of ringing up Gallagher which I can possibly understand is that in some way or other Gallagher and Prescott were both interested in the journey which was being made.

"I think it is perfectly clear in this case that when Moore rang up he knew that at the end of the journey, in a car which he was engaging for his own purposes, he would have to pay the reasonable demands of the driver. I am quite satisfied that at the end of the journey—that is to say, the double journey, because Gallagher arrived in his car in response to the call of Prescott and did complete the journey to Lime Street—I am quite satisfied by the evidence of Moore, every word of which I accept, that Moore asked Gallagher what the charge would be. I am also satisfied by the evidence of Moore that Gallagher then said, 'Oh, no, I am sorry this has happened.' That means, if it means anything—and I have no difficulty in ascribing a meaning to it—that Gallagher was then saying to Moore, 'I am not going to charge you for this journey because it has been a rather disastrous one. It has broken down completely, and you have missed your train!'

"That is wholly inconsistent, in my judgment, with this being a private journey by Prescott. Gallagher's answer to Moore, if this had been a private journey of Prescott's, would have been, 'Well, I did