

TERUKO BAI EI, and CLYDE WERTZ, Plaintiffs

v.

**RAFAEL BILAMANG, RICHARD DEMEI, and
KALISTO JOSEPH, Defendants**

Civil Action No. 465

Trial Division of the High Court

Palau District

June 11, 1971

Action to recover damages to motor vehicle left in care of defendant. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that defendant, as bailee, was liable in tort for injury to the motor vehicle left in his care even though the injury was the result of an accident and not of negligence in the manner in which it was used.

1. Bailments—Liability—Bailee

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, and this rule applies to gratuitous bailments.

2. Bailments—Liability—Bailee

A bailee is liable for the breach of his contract and liable, also, in a tort action for injury to the property bailed, occurring during a use of it by him, or by others with his consent, which was neither expressly nor impliedly authorized by the contract of bailment, even though such injury was the result of accident and not of negligence in the manner in which the property was used.

3. Torts—Negligence—Standard of Care

Negligence is the doing of an act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, when prompted by considerations which ordinarily regulate the conduct of human affairs.

4. Torts—Negligence—Standard of Care

Negligence is the failure to use ordinary care under the circumstances in the management of one's person or property.

5. Torts—Negligence—Standard of Care

Ordinary care is that care which reasonably prudent persons exercise in the management of their own affairs, in order to avoid injury to themselves or their property, or to the persons or property of others.

6. Torts—Negligence—Proximate Cause

The mere showing of negligence is not enough to impose liability, in addition, it must be shown that the negligence was a proximate cause of the damage.

7. Torts—Negligence—Proximate Cause

The proximate cause of damage is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the damage, and without which the result would not have occurred.

8. Torts—Damages—Generally

In a case where it is impossible or impracticable by repairs to restore the damage to property to a condition equally as good as the condition existing immediately prior to the damage, then the measure of damages to be awarded is the difference between the fair market value of the property, immediately before the damage, and its fair market value immediately after the damage, plus the reasonable value of any necessary loss of use pending replacement of the property.

BROWN, Associate Justice

On August 25, 1969, plaintiff, Teruko Baiei, departed from Koror to attend a funeral on Peleliu. Prior to her departure, she gave to defendant, Rafael Bilamang, the key to a certain Daihutsu pickup truck, owned jointly by plaintiffs, and instructed said defendant to take the vehicle to plaintiffs' home but to keep the key until her return so as to prevent plaintiffs' children from practicing driving. Said defendant told her that he would do as he was instructed, and he did return the vehicle to plaintiffs' home, locked it and took the key. Later that day, or in the early evening, defendant, Rafael Bilamang, met with defendant, Richard Demei, and the latter urged Rafael to take the car, and the two of them would drive it about Koror Municipality. Rafael succumbed to temptation, and during the course of the evening the two of them met defendant, Kalisto Joseph (who has been dismissed out of this action), who joined them. As time passed and various establishments were visited, a considerable amount of alcohol was consumed by all three of the above-named defendants. By his own admission, Rafael Bilamang admitted that he became intoxicated to the extent he was unable to drive and turned the controls over to Kalisto Joseph.

Sometime later during the evening, defendant, Richard Demei, undertook to drive plaintiffs' vehicle, after first leaving Kalisto Joseph at the home of a friend. Richard Demei stated, in part, "I wasn't really drunk—I knew a little bit of what I was doing." In any event, he drove the vehicle past the courthouse in Koror Municipality and towards the causeway leading from Koror to Malakal. According to the testimony of an eyewitness, he observed the vehicle traveling very fast, and at an estimated speed of at least 40 to 45 miles per hour, zigzagging as it went down the road. The vehicle then went out of control, swerved to the right, and then swerved to the left, ran off the roadway and crashed into a tree.

Testimony was received without contradiction that the reasonable value of the plaintiffs' vehicle just prior to the accident was one thousand two hundred (\$1,200) dollars. After the accident, its reasonable value was two hundred fifty (\$250) dollars, and this was the amount plaintiffs received for it.

[1] 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. *Palacios v. Ngiraked and Ikeyasang*, 4 T.T.R. 98.

It has been held that the rights of a bailee for his own sole benefit are confined strictly to the use expressly or impliedly agreed upon. 8 Am. Jur. 2d, Bailments, Sec. 194.

[2] Perhaps in no other respect have the courts more strictly held the bailee to account for departure from the terms of his contract than in the matter of use, misuse, or abuse of the thing bailed. Not only is he liable for breach of his contract, but it is also generally held that he is liable in a tort action for injury to the property bailed, occurring

during a use of it by him, or by others with his consent, which was neither expressly nor impliedly authorized by the contract of bailment, even though such injury was the result of accident and not of negligence in the manner in which the property was used. *Maynard v. James*, 146 A. 614 (Conn.).

As a bailee, it is clear that defendant, Rafael Bilamang, fell far short of the duty imposed upon him as to the exercise of due care in the use, custody, and return of the vehicle bailed to him.

Next, we consider the possible liability of the co-defendant, Richard Demei. The facts clearly show that in the operation of the vehicle in question, he was negligent.

[3, 4] Negligence is the doing of an act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, when prompted by considerations which ordinarily regulate the conduct of human affairs. It is the failure to use ordinary care under the circumstances in the management of one's person or property. *Tiller v. Atlantic Coastline R.R. Co.*, 63 S.Ct. 444, 451.

[5] Ordinary care is that care which reasonably prudent persons exercise in the management of their own affairs, in order to avoid injury to themselves or their property, or to the persons or property of others. *City of Richmond v. Atlantic Co.*, 273 F.2d, 902, 915.

[6, 7] The mere showing of negligence is not enough to impose liability. In addition, it must be shown that the negligence was a proximate cause of the damage. The proximate cause of damage is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the damage, and without which the result would not have occurred. *Moses v. Central Louisiana Electric Co.*, 324 F.2d 69, 73.

It is clear that defendant, Richard Demei, was negligent. Likewise, it is equally clear that his negligence was a proximate cause which produced the damage and without which the damage would not have occurred.

[8] In determining the nature of damages in this case, the evidence revealed that it would not have been practicable to have undertaken to repair plaintiffs' vehicle so as to restore it to the condition it was in immediately prior to the accident. In a case where it is impossible or impracticable by repairs to restore the damage to property to a condition equally as good as the condition existing immediately prior to the damage, then the measure of damages to be awarded is the difference between the fair market value of the property, immediately before the damage, and its fair market value immediately after the damage, plus the reasonable value of any necessary loss of use pending replacement of the property. *Standard Oil Co. v. Southern Pacific Co.*, 268 U.S. 146. *Valley Transp. System v. Reinhartz*, 197 P.2d 93 (Ariz.).

In connection with loss of use of the vehicle, plaintiff, Teruko Baiei, stated that on or about December 7, 1969, she and plaintiff, Clyde Wertz, jointly purchased a new vehicle and stated that the reason for the delay in making that purchase was because there were no vehicles for sale during the period from the date of the accident up until December 7, 1969. This testimony was uncontradicted. Plaintiff, Teruko Baiei, stated that she was required to use taxis to take her to and from her work and for her daily shopping. (A government vehicle was available to plaintiff Clyde Wertz.) She estimated her loss of use of the damaged automobile at five (\$5) dollars per day, but admitted that her taxi fares to and from work and for shopping amounted to fifty (50¢) cents, round trip, to one dollar and fifty (\$1.50) cents round trip. Under these circumstances, the Court is of the opinion that plaintiff's claim for loss of use of plain-

tiffs' vehicle is excessive, but the Court is of the opinion that the facts established during trial justify a finding that a reasonable amount to be awarded for loss of use of the said vehicle is the sum of ten (\$10) dollars per week. Therefore, damages for loss of use of automobile to which plaintiff is entitled is in the total amount of three hundred (\$300) dollars.

JUDGMENT

It is hereby ordered, adjudged, and decreed, as follows:—

1. That judgment be entered in favor of plaintiffs, Teruko Baiei and Clyde Wertz, and against defendants, Rafael Bilamang and Richard Demei, and each of them. Said plaintiffs shall recover from said defendants the sum of nine hundred fifty (\$950) dollars property damage to automobile, together with the additional sum of three hundred (\$300) dollars for loss of use thereof, together with costs incurred herein.

2. Each defendant is jointly and severally liable for the full amount of this judgment, but plaintiff may only collect the amount of judgment once, regardless of whether it is collected all from one defendant or partly from one and partly from the other.