

**THE REPUBLIC OF TRINIDAD AND TOBAGO  
IN THE HIGH COURT OF JUSTICE**

**CV 2016-02405**

**BETWEEN**

**MARVIN GOODRIDGE**

**Claimant**

**AND**

**DUANE DONALD O'CONNOR**

**First Defendant**

**LUCAS LEWIS**

**Second Defendant**

**THE REINSURANCE COMPANY OF  
TRINIDAD AND TOBAGO LIMITED**

**Co-Defendant**

**Before the Honourable Mr. Justice Ronnie Boodoosingh**

**Appearances:**

**Mr Asaf Hosein for the Claimant**

**Ms Manisha Lutchman for the First Defendant and Co-Defendant**

**Date: 2 October 2019**

## **REASONS**

1. The main issue to be decided here is whether Dwayne O'Connor gave consent to Lucas Lewis to drive his vehicle. If he did what is the implication of this? This is in the context that there is a claim by the Claimant against Mr. O'Connor's insurance company and I am deciding the issue of liability only.
2. The law relevant to this case has been set out in the judgment of Justice of Appeal Mendonca in **Vaughn Williams & Fazan Rahim, Civil Appeal No. 220 of 2009** where several of the authorities were reviewed.
3. The facts are that on the night of 3<sup>rd</sup> November, 2014 an accident occurred on the Priority Bus Route between a maxi taxi driven by the Claimant and a Lancer car driven by Mr. Lewis. Judgment has been obtained already against Mr. Lewis in default of defence. It is not in dispute that Mr. O'Connor owns the Lancer. It is also not in dispute that it was insured by the third Defendant. In this claim the maxi taxi driver gave evidence that the car unexpectedly swerved unto his side of the road and he could do nothing to avoid the collision. The car struck his vehicle, he was injured. The maxi taxi was damaged. The car was also damaged. Mr. Lewis who was driving was also injured as was Kendal Jones, a passenger.

4. Mr. Lewis has no account of the accident. He said in his witness statement that he noticed a vehicle travelling in the opposite direction and the next thing he knew was waking up in the hospital. So there is no contest in the evidence to the version of the Claimant. In those circumstances I find that Mr. Lewis, as driver was negligent to blame for the accident entirely.
  
5. Duane O'Connor had loaned his vehicle to Kendal Jones a few days before. In his witness statement he said he did not know Mr. Lewis. On the night of the accident he saw the vehicle parked up on Ariapita Avenue which is a place where there are restaurants and bars. It is popularly called the Avenue on account of its night life. He assumed all was in order and he proceeded home. That night Kendal Jones, who Mr. O'Connor had loaned his vehicle to, was with friends hanging out including Mr. Lewis. Mr. Jones according to Mr. Lewis had had too much to drink and was intoxicated. Mr. Jones thus gave him the keys to drive since he, Mr. Lewis, had not had anything alcoholic to drink. He said in the past when they would go out, whichever of them did not drink would drive. Mr. Jones had on occasions before have vehicles borrowed from others and this arrangement held through this time. The same was the case that night.
  
6. The question is did Mr. O'Connor gave consent to Mr. Lewis to drive by lending his vehicle to Mr. Jones. In his witness statement Mr. O'Connor said he had loaned Mr. Jones the vehicle about 31<sup>st</sup> October, 2014 to use the vehicle for a few days. He was supposed to use the vehicle for the weekend and then return it the next week. He did not ask him what he was going to use the

vehicle for. He said in his witness statement that Mr. Jones had borrowed the vehicle before for short periods of time. In cross examination he attempted to retract from this by saying this meant the same way but reasonably it could not. He had in the previous paragraph said he had loaned him on 31<sup>st</sup> October for a few days. Logically therefore any “prior occasions” had to relate to periods of time before this weekend in question. However, that is not the end of the story. He said he does not know Mr. Lewis.

7. In cross examination Mr. Lewis said he did not know O’Connor. He did not know if O’Connor had given permission for him to use the vehicle. There is no evidence that Mr. O’Connor was ever told before the accident that Mr. Lewis may be driving the vehicle if Jones was intoxicated. Patently, there is no connection between Mr. O’Connor and Mr. Lewis. Jones was not called as a witness. Thus he provides no link between the owner of the car and the driver of it in the night in question. There is also no evidence that Mr. O’Connor was ever told of an arrangement that sometimes Mr. Lewis would drive whatever vehicle Mr. Jones would have had. It was also not relevant that Mr. Jones may have been loaned the vehicle on previous occasions. That may have shown permission or agency of Mr. O’Connor in relation to Mr. Jones but not between O’Connor and anyone else that Mr. Jones may have allowed to drive the vehicle.
  
8. There was also evidence of a specific purpose which the vehicle was loaned. Mr. O’Connor by coincidence saw the vehicle on the night in question in Ariapita Avenue. He therefore assumed that Mr. Jones had the vehicle and was using it. That may have shown permission and possibly agency between him and Mr. Jones, but that is as far as it goes. There is no case of permission

by implication to Mr. Lewis based on the incapacitation of Mr. Jones by intoxication that rendered him unable to drive on the night in question. Permission or consent cannot be implied in these circumstances.

9. In cross examination Mr. O'Connor was asked whether it would not have been reasonable and whether he would have consented to Mr. Lewis driving if he knew that Mr. Jones was intoxicated. Mr. O'Connor stated no. This is quite reasonable in light of what he said that another option was for them to call a taxi instead or get permission from Mr. O'Connor. The result is that the owner cannot be responsible for indemnifying the Claimant as to his losses. It is unfortunate for the Claimant but he will have to content himself with trying to recover for his losses from Mr. Lewis.

10. The Claimant must therefore pay the cost of the first defendant and co-defendant in the sum of \$14,000.00.

**Ronnie Boodoosingh**

**Judge**