

Passenger Found Liable For Grabbing Steering Wheel Of Vehicle

November 5th, 2008

Reasons for judgement were released today by the BC Supreme Court determining the issue of fault for a single vehicle collision which occurred in Vernon, BC in 2004. The vehicle left the roadway, hit a ditch and over-turned. 3 of the 4 occupants sued for personal injuries.

The front seat passenger grabbed the steering wheel while the vehicle was in operation. The vehicle then lost control. The court made the following interesting findings of fact:

I find that (the front seat passenger) was the only intoxicated person in the Jeep that night. Hers was the only memory subject to the confounding effect of excessive alcohol consumption. I do not, therefore, accept her recollection over the recollections of (the driver) and (the other passenger), both of whom were sober.

[41] *Finally, I find that of all the people in the Jeep, it was (the front seat passengers) judgment that was impaired by alcohol. The disinhibiting effect of alcohol on judgment is well known – it requires no expert evidence to explain or establish. I am satisfied that if she were sober, (the front seat passenger) would never have behaved as she did. The only conclusion I can come to on the evidence adduced at trial is that (the front seat passengers) intoxication led her to believe that a hazard existed where there was none, or to think that it would be humorous to give the Jeep a shake by grabbing the steering wheel. I therefore find that (the front seat passenger's) judgment was impaired by alcohol and that, as a consequence of that impairment, she negligently grabbed the steering wheel and caused the Jeep to veer off the road.*

[42] *I find that (the driver) did nothing wrong and was not negligent in her operation of the vehicle that night. Specifically, she was not impaired; she was not speeding; notwithstanding her novice driver's licence, she had the proper degree of skill and experience to operate the Jeep; she was attentive and alert; she did not allow the Jeep to wander from its proper course on the highway; and she could not have anticipated that (the front seat passenger) would do something so foolish as to grab the steering wheel and jerk it to the right....*

[43] *In summary, (the front seat passenger) was negligent and her negligence caused the Jeep to swerve off the road and into the ditch. (the driver) was not negligent and did not contribute to the cause of the accident. (the driver) was sober and was competent to drive the Jeep. No person in the Jeep that night was contributorily negligent for having taken a ride with her.*

In addition to the unique facts of this case, it is worth reviewing because the court made some interesting findings with respect to 'use and operation' of a vehicle and the vicarious liability of registered owners of vehicles.

In this case the vehicle was owned by the front seat passenger's father. He permitted his daughter to operate the vehicle but did not permit her friends to operate the vehicle. Section 86 of the Motor Vehicle Act imposes liability on the owner's of vehicles for the actions of the drivers of their vehicle in certain circumstances, particularly, the section holds that:

86 (1) *In the case of a motor vehicle that is in the possession of its owner, in an action to recover for loss or damage to persons or property arising out of the use or operation of the motor vehicle on a highway, a person driving or operating the motor vehicle who*

(a) *is living with, and as a member of the family of, the owner, or*

(b) *acquired possession of the motor vehicle with the consent, express or implied, of the owner,*

is deemed to be the agent or servant of, and employed as such by, that owner and to be driving or operating the motor vehicle in the course of his or her employment with that owner.

In this case the owner of the vehicle argued that he should not be held responsible for the accident because he did not consent to his daughter's friend to operate the vehicle. In fact the court found that:

[24] *The evidence is also clear that as a general proposition, (the owner) instructed his children that no one but them should drive the cars that he left in their possession. His purpose for imposing that rule was to keep the children and his cars safe. That was because he knew and trusted his children's judgment, but he did not necessarily know or trust the judgment of their friends. The question here is whether, notwithstanding his general rule, (the owner) gave his consent to (his daughter's friend) operation of the Jeep on the night of the accident.*

The court found that the father (owner) did consent in these circumstances finding that:

[32] **Barreiro** makes it clear that the policy that drove the result in **Morrison** extends to situations where the owner gives the keys to its agent and the agent passes the keys on to a third party. **Barreiro** stands for the proposition that so long as the transfer of car keys from owner to second party is done by an exercise of free will, and the second party gives the keys to a third party by free will, the owner will be deemed to have consented to the third party's possession of the car. That will be the result even though the owner and the second party had an understanding that the third party was not to ever get possession of those keys.

[33] *In my view, except for the fact that (the owner) obtained no financial benefit from (the driver's) possession of the Jeep, the present case is not distinguishable from **Barreiro**. (the owner) freely gave the Jeep's keys to (his daughter). She freely gave the keys to (the driver). (the owner) must, therefore, be taken to have expressly consented to (the driver's) possession of the Jeep on the night in issue.*

[34] *For the same reason, (the owner) must be taken to have expressly consented to (his daughter's) possession of the Jeep that night, and that is so notwithstanding the fact that she was intoxicated and that her being intoxicated broke the other of (the owner's) rules.*

The moral of this story is be careful who you lend your vehicle to in British Columbia because you can be held responsible for their actions, even if they lend your vehicle to someone who you would not lend your vehicle to!

Lastly, the court found that the father (owner) of the vehicle was responsible for his daughter's actions when she grabbed the steering wheel because, while doing so, she was operating the vehicle. Specifically the court found that:

[51] *When (the front seat passenger) grabbed the steering wheel, she exerted an effort to control the Jeep's trajectory. As such, she was, for a brief period of time, "driving" the Jeep by moving the steering wheel, and she was, for an equally brief period of time, "operating" the Jeep by inputting some control over its steering function.*

[52] *For those reasons, I find that just before the Jeep went off the road, both (the driver) and (the front seat passenger) were driving it. (the front seat passengers) efforts were unwelcome and unhelpful, not to say outright dangerous, while (the driver's) efforts were blameless.*

