Is Employer Liable for Worker's Negligent Driving of Work Vehicle Without Permission?

SITUATION

A roofer is working at a residential construction site in the winter. His employer gives him access to a company truck located at the site. The truck's attached to a trailer that contains supplies and tools needed for the roofing job. The employer gives the roofer keys to the truck so he can access the supplies and warm up inside the truck. But the employer specifically instructs the roofer to never drive the vehicle or remove it from the work site. In fact, driving isn't any part of the roofer's duties. However, during the work day, the roofer unhitches the truck from the trailer and drives it off the site to get lunch. The roofer drives through a stop sign, hits another vehicle and injures the driver, who sues the roofer and his employer. A local traffic law holds an employer liable for damage occurring when an employee is in possession of an employer's vehicle with its consent.

QUESTION

Is the employer liable for the roofer's accident'

A. No, because an employer isn’t liable for its employees’ negligence.

B. No, because the roofer was off duty at the time.

C. Yes, because an employer’s liable for any incident in which an employee is involved during work hours.

D. Yes, because the roofer was in possession of the vehicle with the employer’s consent.

ANSWER:

D. The roofer was in possession of the truck with the employer’s consent and thus the employer’s liable for the roofer’s traffic accident.

EXPLANATION

This hypothetical is based on a case in which an Alberta appeals court found an employer liable for its worker’s negligence under a theory of vicarious liability and based on the *Traffic Safety Act*, which holds employers liable for negligence of an employee who was in possession of a vehicle with the employer’s consent at the time of an accident. The worker in that case had been given keys to the work vehicle and permission to use it on the worksite only. However, he disobeyed specific instructions not to drive the vehicle from the site and used it for a personal errand, got into an accident and injured a third party. The court found that the traffic law imposed liability if the employer had given the worker consent to *possession* of the vehicle’even if it didn’t give him permission to *drive* that vehicle. In this case, the employer had given such consent to the worker and the court said enforcing any conditions the employer placed on that consent would be unfair to innocent third parties, such as the injured driver. In short, once the employer relinquished control of the vehicle to the worker, it was liable for his negligence, concluded the court.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because employers *can* be liable for a worker's negligence through a legal theory called 'vicarious liability.' Vicarious liability arises when the law holds one party responsible for the negligence or actions of another based on a special relationship between them, such as an employment relationship. So when an employer gives a worker permission or authority to use its equipment, the employer may be liable for the worker's negligent operation of that equipment if other workers or innocent third parties are injured due to this negligence. In this case, the employer gave the roofer access to the truck and limited permission to use it. The roofer was driving this truck during the work day when he negligently caused the accident by failing to stop at a stop sign. And the fact that he'd disobeyed instructions and misused the vehicle doesn't automatically absolve the employer of liability.

***Insider* Says**: For more information about employers' liability for workers' negligence while driving see 'Brief Senior Management: Companies Can be Liable for Accidents Caused by Workers' Distracted Driving,' Aug. 2012, p. 8.

B is wrong because the fact the roofer was getting lunch doesn't necessarily mean he was 'off duty' in the law's eyes. The key issue in terms of liability is whether the accident occurred while the worker was acting in the course of his employment. And even when a worker is doing something that's not strictly work-related, he could still be considered to be acting in the course of employment. For example, workers are entitled to meal breaks. Whether the break takes the worker out of the course of employment depends on all the facts and circumstances. So here, the simple fact that, at the time of the accident, the roofer was going out for lunch and not, say, to pick up materials doesn't necessarily mean that his employer isn't liable for his negligence.

C is wrong because an employer could potentially escape liability for an incident involving workers that occurs during work hours. For example, if while on duty, workers engage in horseplay, that activity could be deemed outside the course of employment and so the employer may not be liable for any damages resulting from that activity. In this case, the fact that the traffic accident occurred during the work day is just one of several factors that a court will consider in deciding whether the employer's liable.

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Mustafi v. All-Pitch Roofing Ltd., [2014] ABCA 265 (CanLII), Aug. 20, 2014