Is Mechanic’s Employer Liable for Accident Caused by Negligent Test Drive?

SITUATION

A car owner brings his vehicle to an auto body shop for brake repairs. After the shop’s mechanic completes the repairs, he takes the car for a test drive to ensure they’re working properly. Unfortunately, the mechanic loses control of the car on a wet roadway and collides with another car, injuring the other driver. The injured driver sues the car’s owner for his injuries and the damage to his car, claiming the owner was vicariously liable. (Vicarious liability is 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.) The owner, however, claims the auto body shop is vicariously liable for the negligence of its employee, the mechanic, and thus should be 100% responsible for the damages.

QUESTION

Is the auto body shop liable for the damages caused by the mechanic’s negligence’

A. Yes, because the accident arose out of and in the course of the mechanic’s employment.

B. Yes, because the auto body shop supervised and controlled the mechanic’s conduct at work.

C. No, because lawsuits against an employer related to any work-related incident are barred by workers’ comp laws.

D. No, because, under traffic safety laws, the owner of a vehicle is responsible for any damage caused by the use of that vehicle.

ANSWER

B. The auto body shop employed the mechanic and was in a position to supervise and control his conduct, and therefore was vicariously liable for damages caused by his negligence.

EXPLANATION

This scenario is based on an Alberta court decision that held an employer was 100% vicariously liable for the damages caused by the negligent driving of its mechanic while operating a customer's vehicle. The mechanic was test driving the car after repairing its brakes when he collided with another vehicle, injuring the driver. Because the mechanic was acting as an employee at the time, the court reviewed the *Workers' Compensation Act*, which prohibits claims against an employer for injuries arising out of a work-related incident'including third-party claims. A section of that Act, however, permits apportionment of fault so that third-party defendants who may share some liability aren't held responsible for a greater share of the damages than their share of the fault. The court noted that this provision 'does not bar either a claim or apportionment based on vicarious liability, even when the negligent party has statutory immunity from suit.' In this case, the court found that the auto body shop employed, supervised and controlled the mechanic. It authorized him to test drive the car and, while he was negligently doing so, he caused the accident. In contrast, the car owner had no control over who drove his vehicle once he left it at the auto body shop to be repaired. Although the owner presumably consented to his car being driven as part of the repair process, his reasonable expectation was that it would be driven by a qualified trained mechanic with a valid license. And the owner wasn't personally or directly responsible for the accident. Therefore, the employer was in the best position 'to supervise the situation and prevent the loss' and so was vicariously liable for 100% of the resulting damage [*McIver v. McIntyre*, [2016] A.J. No. 1249, Nov. 28, 2016].

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because this answer refers to the standard that applies to determine whether an injury to an employee is compensable under workers' comp and not whether third parties may be liable for any share of fault when non-employees are injured. Workers' comp insulates employers from liability for an injury if it arose out of and in the course of employment. Here, the issue isn't whether an injury suffered by the mechanic was covered by workers' comp. Rather, the issue is how much fault might belong to a third party'the car owner'for purposes of determining if the car owner should pay for any of the damages that resulted from the accident caused by the mechanic in the owner's car. So this standard doesn't apply.

***Insider* Says**: For more information about workers' comp laws, visit the Workers' Compensation Compliance Centre.

C is wrong because although workers' comp laws do prohibit claims against an employer for injuries arising out of and in the course of employment, these laws may not prohibit claims against *third parties* who may share the responsibility for the injuries. For example, if a worker is injured in a multi-vehicle accident while on duty, he can't sue his employer for his injuries because workers' comp law protects the employer. But if another driver's negligence caused the accident, that driver doesn't escape liability simply because the

injured worker was engaged in work-related activity at the time. Here, the third party car owner escapes liability because he wasn't at fault at all for the accident'not because of the workers' comp laws.

D is wrong because although it's true that traffic laws, such as Alberta's *Traffic Safety Act*, may hold the owner of a vehicle liable for damage caused when someone is driving that vehicle, such laws don't preclude liability being apportioned to others who are also negligent or liable for a particular accident. In this case, there were more than two parties who were potentially responsible for the injuries and damage'the mechanic's employer and the car owner. Because the car owner had no control over or supervision of the mechanic, whose negligence caused the accident, the auto body shop was 100% vicariously liable for the damages caused by his negligence.