Supreme Court of Pennsylvania.

Catherine V. LINEY, Appellant,
v.
CHESTNUT MOTORS, INC.

March 22, 1966.

Action in trespass against garage owner was initiated by pedestrain struck by an automobile belonging to one of the owner's customers and stolen from in front of garage. The Court of Common Pleas No. 1, Philadelphia County, at No. 1630 December Term, 1964, Eugene v. Alessandroni, President Judge, dismissed the action and pedestrain appealed. The Supreme Court, No. 283, January Term, 1965, Eagen, J., held that garage owner violated no duty owed to pedestrian by allowing a customer's automobile to remain double parked in the street in front of the garage with the keys in the ignition, that the superseding cause of pedestrian's injury was the thief's careless operation of the automobile, and that garage owner's negligence, if any, was only a remote cause of pedestrian's injury and would not serve as a basis for action against owner.

Order affirmed.

Musmanno and Roberts, JJ., dissented.

West Headnotes

[1] Automobiles ⚿173(8)
48Ak173(8) Most Cited Cases

Garage owner to whose garage a customer's automobile was delivered for servicing violated no duty owed to pedestrian by allowing automobile, with its keys in the ignition, to remain in front of his garage, double parked in the street from which it was subsequently stolen and driven in a reckless manner causing it to strike pedestrian.

[2] Automobiles ⚿173(8)
48Ak173(8) Most Cited Cases

Even if garage owner who left a customer's automobile double parked in street in front of his garage with the keys in the ignition should have foreseen the likelihood of theft of the automobile, he was not put on notice that thief would be an incompetent or careless driver.

[3] Automobiles ⚿201(7)
48Ak201(7) Most Cited Cases

[3] Automobiles ⚿201(9)
48Ak201(9) Most Cited Cases

The superseding cause of injury of a pedestrian struck by an automobile stolen from street in front of a garage was the thief's careless operation of automobile and garage owner's negligence, if any, in leaving customer's automobile double parked in front of his garage with the keys in the ignition was only a remote cause of pedestrian's injury and would not serve as a basis for action against garage owner.

[4] Negligence ⚿1713

272k1713 Most Cited Cases
(Formerly 272k136(25))

The question of proximate cause is generally for the jury; however, if the relevant facts are not in dispute and the remoteness of the causal connection between defendant's negligence and the plaintiff's injury clearly appears, the question becomes one of law.
***27 **337** Norman M. Brown, Philadelphia, for appellant.

Joseph H. Foster, White & Williams, Philadelphia, for appellee.

Before BELL, C.J., and MUSMANNO, JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

EAGEN, Justice.

In this action in trespass, the lower court sustained preliminary objections to the complaint in the nature of a demurrer and dismissed the action. This appeal challenges the correctness of that order.

The pertinent pleaded facts are as follows:

The defendant operates an automobile sales agency and garage. About ten o'clock a.m. on the day involved, a customer's automobile was delivered to the garage for repairs. The defendant's employees allowed the automobile to remain outside the building, double-***28** parked in the street and with the key in the ignition. About three hours later, it was stolen by an adult stranger who then drove it around the block in such a careless manner that it mounted a sidewalk, struck the plaintiff, a pedestrian thereon, causing her serious injury. Defendant's garage was located in a Philadelphia area experiencing a high and increasing number of automobile thefts in the immediate preceding months.

The lower court's order was correct and we affirm. The complaint failed to state a cause of action against the defendant.

[1][2][3] Assuming that defendant's employees were negligent in permitting the automobile to remain outside in the street under the circumstances described, it is clear that the defendant could not have anticipated and foreseen that this carelessness of its employees would result in the harm the plaintiff suffered. See, Rapczynski v. W. T. Cowan, Inc., 138 Pa.Super, 392, 10 A.2d 810 (1940), and ****338**Roscovich v. Parkway Baking Co., 107 Pa.Super. 493, 163 A. 915 (1933). In other words, the defendant violated no duty owed to the plaintiff. This being so, the plaintiff was not harmed by the defendant's negligence. See, Dahlstrom v. Shrum, 368 Pa. 423, 84 A.2d 307 (1951), and Zilka v. Sanctis Construction, Inc., 409 Pa. 396, 186 A.2d 897 (1962). Assuming also that the defendant should have foreseen the likelihood of the theft of the automobile, nothing existed in the present case to put it on notice that the thief would be an incompetent or careless driver. Under the circumstances, the thief's careless operation of the automobile was a superseding cause of the injury suffered, and defendant's negligence, if such existed, only a remote cause thereof upon which no action would lie. See, Restatement, Torts, (Second) ss 448, 449, and s 302 B, Illustration 2 (1965); Prosser, Law of Torts (2d ed. 1941), at 140--41--42; ***29**DeLuca v. Manchester Ldry. & Dry Cl. Co., 380 Pa. 484, 112 A.2d 372 (1955); Kite v. Jones, 389 Pa. 339, 132 A.2d 683 (1957); and, Green v. Independent Oil Co., 414 Pa. 477, 201 A.2d 207 (1964).

[4] It is true that the question of proximate cause is generally for the jury. However, if the relevant facts are not in dispute and the remoteness of the causal connection between the defendant's negligence and the plaintiff's injury clearly appears, the question becomes one of law: Klimczak v. 7--Up Bottling Co. of Phila., 385 Pa. 287, 122

A.2d 707 (1956), and Green v. Independent Oil Co., supra.

Finally, it is strenuously argued that Anderson v. Bushong Pontiac Co., 404 Pa. 382, 171 A.2d 771 (1961), is controlling. We do not agree. In Anderson, several salient facts were present which are absent here. Those facts clearly put the defendant in that case on notice, not only that the automobile was likely to be stolen, but also that it was likely to be stolen and operated by an incompetent driver. In Anderson, we cited Murray v. Wright, 166 Cal.App.2d 589, 333 P.2d 111 (1958), as persuasive authority for sustaining liability under the facts therein presented. We note that the same court has denied liability in a situation similar to the one now before us. See, Richards v. Stanley, 43 Cal.2d 60, 271 P.2d 23 (1954). Other jurisdictions have reached the same result. See, Midkiff v. Watkins, 52 So.2d 573 (La.App.1951); Wilson v. Harrington, 295 N.Y. 667, 65 N.E.2d 101 (1946); and, Teague v. Pritchard, 38 Tenn.App. 686, 279 S.W.2d 706 (1954).

Order affirmed.

MUSMANNO and ROBERTS, JJ., dissent.

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