IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 0073 of 2012
(High Court HBC Action No.43 of 2009L)

BETWEEN : **NEW WORLD LIMITED**

Appellant

AND : **APISAI VUSONITOKALAU**

1st Respondent

AND : **SOFINA MOREEN BEGUM**

2nd Respondent

Coram : **Calanchini, P**
Prematilaka, JA
Jameel, JA

Counsel : **Mr. A .K. Narayan for the Appellant**
Mr. R. P. Chaudary for the Respondent

Date of Hearing : **14 February 2018**

Date of Judgment : **8 March 2018**

JUDGMENT

Calanchini, P

[1] I agree that the appeal should be allowed, the judgment of the Court below set aside and that the claim be dismissed against the Appellant.

Prematilaka, JA

[2] I have read in draft, the judgment of Jameel JA and agree with the reasons and conclusions of the judgment.

Jameel, JA

Introduction

[3] This is an appeal from the judgment of the High Court dated 22 October 2012, allowing the claim of the Original Plaintiff Apisai Vusonitokalau ('the deceased'), contained in his Amended Statement of Claim dated 23 August 2011, and awarding him a sum of $57,146.07 as damages, and a sum of $2,500.00 as costs against the Appellant, (the original 1st Defendant).

[4] After Notice of Appeal was filed on 9 December 2012, the original Plaintiff died on 4 January 2013, Letters of Administration were granted to Naomi Cagiloala on 9 January 2014, and Court made order for the said Naomi Cagiloala to be substituted in this case as the 1st Respondent in place of the deceased, Apisai Vusonitokalau. The substituted party will hereinafter be referred to as the '1st Respondent'.

[5] On 9 July 2009, the deceased was knocked down by the 2nd Respondent (original 2nd Defendant) who was driving vehicle No.CY 591, when he was crossing the road. As a result of the accident, the deceased suffered injuries and was hospitalized for treatment.

The Agreement to Sell

[6] At the time of the accident, the vehicle driven by the 2nd Respondent was registered in the name of the Appellant, who had sold it to one Davendra Pillay ("Pillay"), under an Agreement to Sell dated 1 September 2006. The Buyer Pillay, was the husband of the 2nd Respondent driver. In terms of the 'Agreement to Sell', entered into between the Appellant and Pillay, the Appellant agreed to sell the said vehicle to Pillay for a sum of $6240.00. The sale price was to be paid in equal monthly installments, starting from 1 September 2006. The written agreement between the Appellant and the buyer Pillay, stated that the vehicle will remain registered in the name of the Appellant, until payment of the full purchase price. The agreement also required Pillay to pay the third-party insurance premium and other taxes each year.

Relationship between the Appellant and Pillay

[7] Incidentally, Pillay also happened to be an employee of the Appellant. On the day in question, his wife the 2nd Respondent, who had no license to drive a motor vehicle, drove it and knocked down the deceased, the original Plaintiff in the court below.

[8] The 2nd Respondent was charged, pleaded guilty and was convicted of the offence of careless driving under section 99(1) of the Land Transport Act, and for the offence of driving a vehicle a motor vehicle without a valid license, under section 114 of the Land Transport Act 1998.

The Proceedings in the High Court

[9] The first Statement of Claim was dated 17 March 2009. Both the Appellant, and 2nd Respondent (original 2nd Defendant) did not file their respective Statements of Defence, and default judgment was entered against them. This was later set aside on the application of the Appellant, and proceedings continued afresh.

The Deceased's Amended Statement of Claim

[10] In his Amended Statement of Claim dated 23 August 2011, the deceased pleaded that at all material times the Appellant was the registered owner of the vehicle bearing registration CY 591, and it was in the custody, care and control of Pillay as employee of the Appellant. He pleaded that Pillay was reckless, careless and negligent in not prohibiting his unlicensed wife from driving the vehicle and that the negligence of Pillay was attributable to the Appellant as employer of Pillay. The deceased claimed that as a result of the accident he had suffered injuries, pain and loss of earning capacity.

The Appellant's Statement of Defence

[11] The Appellant admitted that it was the registered owner of the said vehicle, but denied that the 2nd Respondent drove the vehicle as its servant and, or agent. The Appellant stated that because it had sold the vehicle to Pillay, it was not responsible for any

damages arising from the use of the car by Pillay, and claimed contributory negligence on the part of the deceased.

[12] It is significant that in the Minutes of the Pre-Trial Conference it was admitted that the 2nd Respondent drove the said vehicle at the time of the accident for her own use and benefit. This *per se* places beyond any doubt that no connection could in law be drawn between the act of the 2nd Respondent and the Appellant.

Evidence before the High Court

[13] The learned trial Judge believed the evidence of the deceased who testified that he had been crossing the road in close proximity to a round-about and was stationary, when he was hit from the rear, by the car driven by the 2nd Respondent. Several witnesses gave evidence. Narayan, the Administrative Manager of the Appellant testified that the 2nd Respondent was not employed by the Appellant. The vehicle driven by the 2nd Respondent, had been sold to Pillay under an Agreement to Sale entered into on 1st September 2006. Pillay had commenced payments from 1 September 2006, and a summary of past payments was led in evidence. Both, the Agreement to Sell and, proof of past payments by Pillay were admitted without objection. Pillay as the buyer, had exclusive possession of the vehicle for his private use and the Appellant had no control or use of the vehicle. Pillay who also happened to be an employee of the Appellant, in the capacity of Wholesale Manager, testified that he paid the insurance premium in the name of the Appellant, and the registration remained in the name of the Appellant, as security for the loans he owed the Appellant. He testified that he had purchased the vehicle and took possession in 2006, and that at all times the vehicle remained under his sole custody and for his private use only.

The Judgment of the High Court

[14] The learned trial Judge awarded the 1st Respondent general damages, damages for future loss of amenities, loss of income and special damages against the Appellant. The learned trial Judge found that the Agreement to Sell that had been entered into between the Appellant and Pillay was a private, informal agreement and did not transfer ownership to Pillay. He found that in view of this, the Appellant retained legal control

over the vehicle, and that imputation of liability must be based on ownership of the vehicle, as reflected in the registration.

[15] Although the learned trial Judge found that the 2nd Respondent did not drive in the course of the business or trade of the Appellant, he proceeded to hold the Appellant vicariously liable on the basis that she was an agent of the Appellant through ratification of her conduct by the Appellant because, it had permitted the vehicle to remain with Pillay even after the accident.

<u>The First ground of appeal; Third - Party Insurance</u>

[16] The first ground of appeal pleaded was as follows:

> *"The Learned Trial Judge erred in law and in fact by finding that since the Appellant had a Third-Party Insurance cover in its name, it clearly manifested it would be prepared to indemnify any loss or damage that might be caused by the use of the car and erroneously proceeded to rely on this as one of the factors to find liability against the Appellant."*

[17] The purchase of the insurance policy is a statutory requirement. However, the existence of an insurance policy, will not create a relationship which gives rise to vicarious liability on the part of the registered owner, in respect of damages arising from the acts of the driver of the vehicle. Thus, the reliance of the learned trial Judge on the policy of insurance being in the name of the Appellant, to impute vicarious liability to the Appellant is not correct.

[18] Further, the Agreement to Sell had been entered into long before the accident, thus it could not be regarded as a sham that was introduced to avoid liability. There was no legal impediment to the Agreement to Sell being entered into, and Pillay having possession of the vehicle, whilst its registration remained with the Appellant as vendor, as security for repayment of the money owed by Pillay (the buyer) to the Appellant (the seller). It was admitted in the Pre-Trial Conference Minutes that at the time of the accident, the 2nd Respondent drove the said vehicle for her own use and benefit.

[19] Although the 2nd Respondent was not expressly authorised to drive the vehicle by the Appellant, it may be argued that as a result of the Agreement to Sell, there was implied permission. However, the Contract of Insurance did not cover her driving the vehicle as she was an unlicensed driver. Furthermore, since vicarious liability arises only if there is a relationship between the tortfeasor and the defendant, which renders the defendant liable, when the tortfeasor is acting within the scope and in the course of his employment, or was doing something for the benefit of the defendant, the 2nd Respondent's acts cannot be the basis of attaching liability to the Appellant. Therefore this ground of appeal is allowed.

The Second Ground of Appeal: Registration in the name of the Appellant

[20] The second ground of appeal pleaded was as follows:

> *"The learned trial Judge erred in law when he held that it is the registered ownership that matters when it comes to the issue of imputation of liability but not the physical possession, and erroneously proceeded to rely on this as one of the factors to find liability against the Appellant".*

[21] Although registration is prima facie proof of ownership, it is not registered ownership alone that can be the foundation of vicarious liability. Registration does not create vicarious liability in the registered owner in respect of every driver of the vehicle. In this case, the Appellant was not vicariously liable for the acts of the 2nd Respondent.

[22] In order to determine the significance of the Agreement to Sell between the Appellant and Pillay, it is useful to consider the following extract - (Atiyah, P.S., Adams, John. N & Macqueen, Hector; Sale of Goods, 11th ed., 2005 p.19):-

> *"Parties sometimes enter into or go through the motions of entering into, a contract to sell goods with the intention of using the goods as security for a loan of money. If the owner of goods A wishes to borrow money on the security of the goods, he may charge or mortgage them to B) on the understanding that (1) A will retain possession of the goods, (2) A will repay B what he or she has borrowed together with interest, and (3) B will have the right to take the goods from A if and only if A fails to repay the loan or interest at the agreed time. Such a transaction differs from a hire*

purchase contract which is designed to enable a person to acquire goods on credit. A loan or security is designed to enable someone who already owns goods to *borrow money* *on the security of the goods"*

"Partly in order to evade the Bills of Sales Acts, but partly for other reasons, parties sometimes enter into these kinds of transaction in the form of a sale- thus A can sell his or her goods to B, though retaining possession of them in certain events. In modern times, this kind of transaction is almost invariably reinforced with a hire-purchase agreement, or (in commercial transactions) a leaseback. A sells the goods (usually a motor vehicle) to B for a cash price and then B lets the same vehicle back to A under a hire- purchase contract. Or a manufacturing company may 'sell' plant or machinery to a finance company which then 'leases' the goods back to the manufacturers. Under s. 62(4) of the Sale of Goods Act:

The provisions of this Act about contracts of sale do not apply to a transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

In analysing transactions of this nature courts have always insisted that the substance if the transaction and not merely form must be examined".

[23] In this case, the Agreement to Sell contained *inter alia*, the following conditions:

"The buyer has agreed that the vehicle shall remain the property of the vendor till the purchaser clears the debts.

The buyer has agreed to maintain the vehicle in proper working condition, pay all the LTA registration fees, third party insurance policy and other expenses, taxes as may be applicable and related to the vehicle hereinafter.

The vendor hereby agrees to transfer the vehicle upon payment of the debt and the buyer will meet all costs pertaining to the transfer.

The buyer agrees not to assign/transfer/encumber the vehicle without settlement of the debt.

The Reality - Substance and not Form

[24] In considering the implications of a transaction of this nature, the court must look at the reality and the substance of the transaction between the parties, not only as manifested in the documents executed, but also from the conduct of the parties.

In **Kingsley v Sterling Industrial Securities Ltd**, [1967] 2 QB 747, 780, Winn LJ said:

"In my definite view the sole or entirely dominant question upon that part of the appeal to which I have so far adverted is whether in reality and

upon a true analysis of the transaction and each of them, and having regard in particular to the intention of the parties, they constituted loans or sales. It is clear upon the authorities that if a transaction is in reality a loan of money intended to be secured by, for example, a sale and hiring agreement, the document or documents embodying the agreement will be within the Bills of Sale Acts; it is equally clear that each case must be determined according to the proper inference to be drawn from the facts and whatever the form of transaction may take, the court will decide according to its real substance." (cited in Atiyah, et al. ibid. P. 19)

[25] Assuming for the sake of argument that Pillay failed to prevent his unlicensed wife from driving the vehicle, it would not amount to negligence *qua* employee of the Appellant, because the vehicle was not part of the contract of employment between Pillay and the Appellant. Pillay did not possess the vehicle in his capacity as employee of the Appellant. Therefore, vicarious liability cannot in law attach to the Appellant. The second ground of appeal is therefore allowed.

The Third and Seventh Grounds of Appeal – Vicarious Liability

[26] The third ground of appeal was pleaded as follows:

> *"The Learned Trial Judge erred in law when having found that the accident did not occur in the course of business or trade of the Appellant failed to find that the Appellant was not vicariously liable for the negligence of the 2nd Respondent."*

[27] The theory of vicarious liability has evolved over the centuries, and has no doubt been fraught with uncertainty. It has moved from the traditionally recognized relationship of master and servant, to the inclusion of other relationships that reflect changes in how workplaces now function. The following is a useful excerpt to preface what is required to be considered in this appeal.

> *'Changes in employment practices (for example, the increasing casualization of the growing numbers of 'home workers') have produced a situation in which, for employment protection purposes, it has become difficult to continue to regard people as servants who would once routinely have been such. Without suggesting that an employee should always be vicariously liable for the torts of his independent contractor (a course which would be impracticable and probably economically inefficient) it is questionable whether a tort claimant should necessarily be affected by internal changes in the employer's employment structure*

which have nothing to do with the nature of his activities or the risk presented by them. (Winfield & Jolowitz. Tort, Peel, W.E. & Goudkamp, Nineteenth ed.2014)'.

[28] Under the original command theory, a master was responsible for all his servant's wrongs. This was modified later to cover only particular acts he had ordered. Eventually, the test was to determine whether the tortfeasor had acted within the scope and course of employment.

> *"We speak of 'vicarious liability' when the law holds one person responsible for the misconduct of another, although he is free from personal blameworthiness or fault".* (John G. Fleming, Law of Torts, Ninth ed.1998, p.409.
>
> *"Most important is the belief that a person who employs others to advance his own economic interest should in fairness be placed under corresponding liability incurred in the course of the enterprise, that the master is a more promising source of recompense than his servant who is apt to be a man of straw without insurance, and the rule promotes wide distribution of tort losses, the employer being the most suitable channel for passing them on through liability insurance and higher prices" (John G. Fleming, ibid, p. 410).*

[29] The learned trial Judge based his finding of vicarious liability on the fact that the vehicle was registered in the name of the Appellant, at the time of the accident, and that failure to withdraw the vehicle from Pillay after the accident, amounted to ratification of the act committed by the 2nd Respondent.

[30] In paragraph 21 of the Judgment, the learned trial Judge observes that the vehicle continued to remain with Pillay and that no report was called for from him even after the accident. However, it appears that the learned trial Judge did not consider the Agreement to Sell entered into between Pillay and the Appellant, and that the vehicle was not in the possession of Pillay in his capacity as an employee of the Appellant.

[31] The foundation of vicarious liability is that the tortfeasor must stand in a particular relationship with the person sued, and the tortfeasor should have been engaged in a

matter which is part and parcel of his contract of employment, or be engaged in an act which benefited the employer. Vicarious liability is said to;

> *...represent the expression of a rather deep-seated and intuitive idea that someone who, generally for his own benefit, sets a force in motion should have responsibility for the consequences even if he chooses others to carry out the task'.* (Winfield & Jolowitz on Tort, 19th ed. page 642)

[32] Vicarious liability can arise either through the relationship of employer and employee, or through agency. In this case, liability was claimed on the basis of an employer - employee relationship. The 1st Respondent pleaded that Pillay who had possession of the vehicle, was negligent in not preventing his unlicensed wife from driving the vehicle, owned by the Appellant, and Pillay's negligence was attributable to the Appellant. The Appellant had however sold the vehicle to Pillay, and had no control over the possession of the vehicle. It was not part of his contract of employment. The 2nd Respondent was not employed by the Appellant. It was agreed that at the time of the accident, the 2nd Respondent drove for her own purposes. Therefore, in the absence of any relationship either an employment or agency relationship between the Appellant and the 2nd Respondent, the Appellant is not vicariously liable for the acts of the 2nd Respondent.

[33] In **Rabul Jahan & Another v Sukhlal** [1969] 15 F.L.R. 202, which was an action for damages for personal injuries, the Court of Appeal held that even if the driver of the vehicle was negligent, if he was not acting as agent of the owner when he was driving the vehicle at the time of the accident, there can be no finding of vicarious liability against the owner of the vehicle.

[34] In **Singh v Chandra** [1972] Fiji Law Rep. 25; [1972] 18 FLR 137 (5 October 1972), the Plaintiff was injured by the motor vehicle driven by the 1st Defendant, who was found to have driven negligently. Although he had the permission of the owner to drive, since he had driven it for his private purposes unconnected with the interest of the owner, the owner was not liable. The court relied on the decisions in **Omrod v Crosville Motor Services Ltd**. [1953] 2 All. E.R.753, and **Launchberry v Morgans** [1971] 2 W.L.R. 602.

[35] In **Chandra v Narain** [1997] FJCA 42, ABU 0051u. (14 November 1997), it was held that no authority to do something unlawful should be inferred.

[36] The court in **Chandra v Narain** *(supra),* was guided by the ratio of the New Zealand Court of Appeal in **Manawatu County v. Rowe**[1956] NZLR 78 approved by the Privy Council in **Rambarran v. Gurrucharran** [1970] 1 WLR 556, 560, which established the following principles:

> 1. *The onus of proving agency rests on the party alleging it.*
>
> 2. *The fact of ownership of a vehicle gives rise to an inference that the driver was the agent of the owner; in other words, that fact alone in the absence of anything else, provides some evidence to go to a jury;*
>
> 3. *This inference can be drawn in the absence of other evidence bearing on the issue or where such other evidence as there is, fails to counter- balance it.*
>
> 4. *For the plaintiff to make the owner liable, the plaintiff must establish that the driver was driving the car as a servant or agent of the owner and not for the driver's own benefit and for his own concerns.* (Emphasis added).

[37] In **Rowe's** case *(supra),* Mrs Rowe, while driving her husband's motor car with his consent, collided with the appellant's vehicle. The Court of Appeal held that she was not driving the car as a servant or agent of her husband, and her husband was therefore not liable.

[38] In **Rambarran**'s *(supra),* the Privy Council held that the father was not vicariously liable for his son's negligence even though he had his father's general permission for driving the car. In this case, the father who had given his son permission to drive his car was held not responsible for an accident caused by the son, because it did not occur during the period authorised by the father. The father became aware of the accident only about two weeks after it had happened. This negated any presumption that the son drove on behalf of the father.

[39] Thus, whatever the relationship may be, if the negligent act of the defendant did not occur within the general permission or consent, there can be no presumption that the defendant acted on behalf of the owner.

[40] In **Hewitt v. Bonvin** [1940] 1 K.B. 188, 194-5, De Parq L J said:

> *"The driver of a car may not be the owner's servant and the owner will be nevertheless liable for his negligent driving if it be proved that at the material time he had authority express or implied to drive on the owner's behalf. Such liability depends not on ownership, but on the delegation of a task or duty."*

[41] In **Launchbury v. Morgan** [1973] AC 127, the facts were that, a man who usually used his wife's car to go to work, one day after visits to several public houses and for safety reasons, got a friend to drive him home. The friend invited a person known to him, and unknown to the owner's husband, to join them. They drove off in a different direction from the owner's home. As a result of the negligent driving of the driver who was invited by the owner's husband, the car collided with a bus and injured several persons. The injured persons claimed that the wife was vicariously liable for the driver's negligence. The owner was held to be not vicariously liable for injuries caused by the driver, despite the interest she may have in the safety of her husband. Thus, mere consent and permission *per se* of the owner, to drive the vehicle, would not automatically attach vicarious liability on the registered owner.

[42] **Ilkiw v. Samuels**, [1963] 2 All E.R. 879 and **Rose v. Plenty**, [1975] 1 All E.R.97, relied on by the 1st Respondent, were both cases in which the master -servant relationship was in existence, and the servants had disobeyed the master's instructions. Liability attached to the employers in both cases because the acts done by the servants though wrongly done, were within the course and scope of employment. Thus, although the servant had allowed a third party to do his job, nevertheless it fell within the scope of the servant's job. This rendered the master liable.

[43] The Appellants in this case relied on the recent English decision in **Mohamud v Morrison Supermarkets** [2016] UKSC 11. In formulating the test for vicarious liability, Lord Toulson said:

"Vicarious liability in tort requires, first, a relationship between the defendant and the wrongdoer, and secondly, a connection between that relationship and the wrongdoer's act or default, such has to make it just that the defendant should be held legally responsible to the claimant for the consequences of the wrongdoer's conduct. In this case the wrongdoer was employed by the defendant, and so there is no issue about the first requirement. The issue in the appeal is whether there was sufficient connection between the wrongdoer's employment and his conduct towards the claimant to make the defendant legally responsible.

[44] In another recent English decision of **Cox v Ministry of Justice** [2016] UKSC 10 relied on by the Appellant, Lord Reed said:

"Vicarious liability in tort is imposed on a person in respect of the act or omission of another individual, because of his relationship with that individual and the connection between that individual, and the connection between that relationship and the act or omission in question"

[45] Having traced the historical development of the principles of vicarious liability that has evolved over the years, and in regard to the present law, the Court said: -

"The present law

44. In the simplest terms, the court has to consider two matters. The first question is what functions or "field of activities" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly; see in particular the passage in Diplock LJ's judgment in Ilkiw v Samuels [1963] 1 WLR 991, 1004 included in the citation from Rose v Plenty at para 38 above, and cited also in Lister by Lord Steyn at para 20, Lord Clyde at para 42, Lord Hobhouse at para 58 and Lord Millett at para 77.

45. Secondly, the court must decide whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice which goes back to Holt. To try to measure the closeness of connection, as it were, on a scale of 1 to 10, would be a forlorn exercise and, what is more, it would miss the point. The cases in which the necessary connection has been found for Holt's principle to be applied are cases in which the employee used or misused the position entrusted to him in a way which injured the third party. Lloyd v Grace, Smith & Co,

Peterson and Lister were all cases in which the employee misused his position in a way which injured the claimant, and that is the reason why it was just that the employer who selected him and put him in that position should be held responsible. By contrast, in Warren v Henlys Ltd any misbehaviour by the petrol pump attendant, qua petrol pump attendant, was past history by the time that he assaulted the claimant. The claimant had in the meantime left the scene, and the context in which the assault occurred was that he had returned with the police officer to pursue a complaint against the attendant". (Emphasis added)

[46] In this case, the evidence established that at the time of the accident, the 2nd Respondent did not drive the vehicle as the agent of the Appellant. Therefore, the finding that the Appellant was liable for the acts of the 2nd Respondent was an error of law. The third and seventh grounds of appeal are therefore allowed.

The Fourth, Fifth and Sixth grounds of Appeal - Ratification

[47] The fourth ground of appeal pleaded was as follows:

> *"The Learned Trial erred in fact and in law when he found that the Appellant allowed the use of the car by the 2nd Respondent and erroneously proceeded to rely on this as one of the factors to find liability against the Appellant".*

The fifth ground of appeal pleaded was as follows:

> *"The Learned Trial Judge erred in fact and in law when he proceeded to consider and decide the matter on the principles of ratification and ratification by the Appellant when no such allegation was pleaded on the statement of claim or made an issue in the Pre-Trial Conference Minutes thus imputed vicarious liability of the Appellant".*

The sixth ground of appeal pleaded was as follows:

> *"The Learned Trial Judge erred in fact and in law when he found that the Appellant ratified the conduct of the 2nd respondent as the Appellant permitted the car to remain with Mr. Pillay, thus imputed vicarious liability of the Appellant".*

[48] These three grounds of appeal overlap and can be dealt with together. The finding of ratification was based on the fact that the Appellant continued to permit Pillay to have possession of the vehicle, after the accident and failed to show evidence of disapproval of Pillay's act. However, the fact that the vehicle was not with Pillay on the basis of his contract of employment, and the absence of any legal relationship between the Appellant and the 2nd Respondent, precludes such a finding.

[49] Although ratification was not pleaded, or raised as an issue, if there was actual evidence of it, it was open to the learned trial Judge to consider it. However, for the reasons set out below, I am of the view that on the evidence before the court below, there was no basis to impute vicarious liability on the ground of ratification.

[50] A basic requirement for ratification is that a principal can ratify only what is capable of ratification. In addition, there can be ratification only between principal and agent and only what is lawful, can be the subject of ratification for the purpose of imputing vicarious liability. Thus, the Appellant cannot have ratified the 2nd Respondent's act of driving the vehicle without being in possession of a valid license, in addition to the absence of a legal relationship between the Appellant and the 2nd Respondent. Accordingly, the principle of ratification could not have been invoked in this case. This ground of appeal is therefore allowed.

The Seventh Ground of Appeal

[51] The seventh ground of appeal pleaded was as follows:

> *"The Learned Trial Judge erred in law in holding that the Appellant was vicariously liable for the negligence of the 2nd respondent in all the circumstances."*

This ground of appeal has been formulated vaguely, and therefore will not be determined.

The Eight ground of appeal – erroneous calculation of damages

[52] The eighth ground of appeal pleaded is as follows:

"the learned trial Judge erred in law and in fact in applying incorrect principles of law in circulating the quantum of damages for the 1st Respondent and in particular in awarding $20,000.00 for future loss, amenities, thus departing from the usual principles of assessing damages and reached incorrect quantum of damages".

[53] In view of my finding that there is no vicarious liability on the part of the Appellant in respect of the damages arising out of the accident, the calculation of damages does not arise.

Orders of the Court:

1. *The Appeal of the Appellant is allowed, and the judgement of the High Court dated 22 October 2012 is set aside.*
2. *The claim against the Appellant is dismissed.*
3. *In all the circumstances of the case, the parties will bear their own costs.*

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Hon. Mr. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL

....
Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL

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Hon. Madam Justice Farzana Jameel
JUSTICE OF APPEAL