1959
*Nov. 10
Nov. 30

LAW, UNION & ROCK INSURANCE COMPANY LIMITED (*Defendant*) — APPELLANT;

AND

MOORE'S TAXI LIMITED (*Plaintiff*) — RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Insurance—Comprehensive—Taxi company claiming from insurer for negligence of driver—Breach of duty to retarded child passenger—Negligence—Immediate or proximate cause of accident—Chain of causation—Complementary policies—Claims arising out of ownership or operation of motor vehicle.

A taxi driver, who had the duty of conveying home retarded children and delivering them there safely from a special school, let one child out of the taxi opposite his home to cross the street alone. The child was hit by a truck and seriously injured. Damages were awarded to the child and his parents against the taxi company. The latter being insured under a comprehensive policy with the defendant, covering damages, *inter alia,* because of bodily injury, but excluding claims arising out of the ownership, maintenance, use or operation of any motor vehicle obliged by law to carry a licence, sued the defendant under this policy. The trial judge dismissed the action, but this judgment was reversed by the Court of Appeal. The insurer appealed to this Court and contended, *inter alia,* that the words "arising out of" in the exclusion clause, should be construed as meaning "originating from, incident to or having connection with" the use of the vehicle, and in any case that the proximate cause of the accident was the driver's stopping on the wrong side of the street.

Held: The appeal should be dismissed and the action maintained.

The obligation to conduct the child to the door of its home on foot formed part of the contract of carriage, but had nothing to do with the motor vehicle. The words in the exclusion clause could only be construed as referring to claims based upon circumstances in which it is possible to trace a continuous chain of causation unbroken by the interposition of a new act of negligence and stretching between the negligent use and operation of a vehicle and the injuries sustained. Here, the vehicle was stationary and the chain of causation originating with its use was severed by the intervening negligence of the taxi driver, who failed to escort the child. That failure gave rise to the defendant's liability.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], reversing a judgment of Williams C.J. Appeal dismissed.

G. C. Ball, for the defendant, appellant.

C. V. McArthur, Q.C., and *R. B. McArthur,* for the plaintiff, respondent.

*PRESENT: Cartwright, Abbott, Martland, Judson and Ritchie JJ.

[1] (1959), 20 D.L.R. (2d) 149.

The judgment of the Court was delivered by

RITCHIE J.:—At the time of the happening of the events hereinafter related the respondent taxi company was "the Insured" under a comprehensive liability policy issued by the appellant whereby the appellant agreed

> . . . to pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed by law on the Insured . . . for damages . . . because of bodily injury . . . sustained by any person and occurring during the Policy Period.

By the next following provision of this policy it is stipulated under the heading "EXCLUSIONS" that

> The Company shall not be liable under this Insurance for claims arising out of . . . the ownership, maintenance, use or operation by or on behalf of the Insured of any motor vehicle, trailer or semi-trailer which is obliged by law to carry a license or of any aircraft or watercraft;

It is to be noted also that there was attached to the policy a "SCHEDULE OF HAZARDS AND PREMIUMS", and that one of the operations listed as covered by the policy was "Taxi Service" for which a substantial premium was charged.

It is the question whether or not the claim hereinafter described comes within the terms of the foregoing exclusion so as to exempt the appellant from liability, which lies at the heart of this appeal.

In the course of its business as an operator of taxis in the city of Winnipeg, the respondent had entered into an agreement with the Association for Retarded Children (hereinafter referred to as the "Association") by the terms of which it agreed to transport retarded children to and from school and in particular to take them directly to their homes from school and not to let any child out on the side of the street opposite to its home.

On May 18, 1955, one of the respondent's taxi drivers was transporting a child named Finbow in one of the respondent's taxis from the school to his home, and there is no doubt that it was part of the duty which he owed to this child to see that he was delivered there safely. Unfortunately on the occasion in question, the taxi driver stopped on the side of the street opposite to the child's home and let the child out of the taxi to cross the street alone, in the

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course of doing which the child was hit by a truck and sustained very serious injuries. The child (by his next friend) and his parents obtained a judgment against the respondent and the respondent in turn brought this action against the appellant under its comprehensive liability policy. The appellant, by way of defence, invoked the provisions of the exclusion set forth above, alleging that the claim arose out of the ownership, use and operation of the respondent's motor vehicle and was, to use the language of the pleadings, "thereby excluded by the clear language of the insuring agreements". The learned trial judge, Chief Justice Williams, dismissed the action on this ground, and the respondent having appealed to the Court of Appeal of Manitoba[1], the appeal was allowed and judgment given for the respondent in the amount of $13,297.31. It is from this decision that the appellant now appeals.

For the purposes of this action the parties agreed to accept the findings of fact of the trial judge (Freedman J.) in the action brought by the infant and his parents against the respondent and others (*Finbow et al. v. Domino et al.*[2], and the following passages from the decision in that case are significant:

> I would not attach too much significance to stopping on the opposite side of the street if the driver had thereafter himself taken the child across the street. But as he did not do so the act of stopping where he did must be looked upon as the first in a series of acts or omissions which continued to the very moment when the boy was injured and which in the aggregate constituted negligence of a very grave degree.
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> The items of negligence in combination constitute a formidable indictment against the taxi driver. He stopped on the opposite side of the street from the boy's home, contrary to the company's express agreement to do otherwise. He allowed the child to emerge from the taxi through the left or traffic side. Then he went back into the cab leaving the boy outside—a rash thing even if the child were normal, but an especially dangerous thing in the case of a retarded child. Thereafter, as the potential tragedy unfolded before him, he failed to rectify his prior errors by prompt and vigilant steps to safeguard the boy. Instead he sat behind the wheel. His failure to take such steps as the circumstances required and as his duty dictated was inexcusable. It constituted a further act of negligence which continued until the accident occurred.

The reasoning of Chief Justice Williams in his decision at the trial of this action appears to be predicated on the proposition that the respondent's liability was imposed

[1] (1959), 20 D.L.R. (2d) 149. [2] (1958), 65 Man. R. 240.

upon it by reason of a breach of its duty as a carrier of passengers by motor vehicle. Having cited authority for the proposition that "in every hiring of a taxicab there is an implied contract that the passenger will be carried safely to his destination", see *Misenchuk v. Thompson*[1], the learned trial judge goes on to say: "I am in no doubt that the real cause of the accident was the failure to carry the child to its destination", and he concludes that

> The operation or use of the taxicab for purposes of transportation was not at an end and could not be until the passenger was delivered to his destination.

With the greatest possible respect, this reasoning appears to me to leave out of account the obligation to conduct the child to the door of its home on foot which formed a part of the contract of carriage and had nothing to do with the motor vehicle. This phase of the matter is made abundantly clear in the letter which was written on behalf of the Association to the respondent on October 6, 1954, and in which it was said:

> Another point I would like adjusted, that of letting a child out of a car by him or herself, and on the opposite side of the street from their house. This, I hope, is not practised too much as it could lead to very grave results. The child not recognizing its own house, could very soon wander and become lost and involved in an accident while trying to cross a street. *It is, therefore, necessary for the driver to see the child out of the car and to the door.* (The italics are mine.)

In my opinion the agreed facts upon which this action is based do not disclose evidence of such negligence in the use and operation of the respondent's vehicle as to make this the source of the liability imposed upon it for the boy's injury although there can be no doubt that the action of the driver in *ceasing* to use and operate the motor vehicle before it reached his home constituted a breach of the respondent's contract with the Association and of its duty to the boy himself. It was after the boy had left the stationary vehicle and was standing unharmed on the sidewalk facing the potential peril of crossing the street alone that the taxi driver became seized with an entirely different kind of duty which had nothing to do with the use or operation of the motor vehicle but rather involved his getting out of it and conducting the boy in safety to his home, and

[1] [1947] 2 W.W.R. 849, 55 Man. R. 389 at 399.

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it is by reason of the breach of this duty that the law imposes liability on the respondent. I agree with the learned Chief Justice of Manitoba, speaking on behalf of the Court of Appeal of that province in the course of the decision from which this appeal is asserted, in saying that:

> In my opinion the liability of the plaintiff arose from the neglect of the driver of the taxi to escort the child to his home. That there was a duty to do so is not disputed. This was a duty separate and distinct from the "use and operation" of the motor vehicle. The car had ceased to operate and was not in use. To incur liability in the use and operation of the motor vehicle implies some negligence in such use or operation. That was not what gave rise to the liability in this case.

I am also in agreement with Tritschler J.A. when he says in the course of concurring with Adamson C.J.M.:

> The comprehensive policy issued by defendant is complementary to the standard motor vehicle liability policy and the coverage of the former commences where the coverage of the latter ceases. In my opinion the plaintiff could not succeed against the insurer under the standard motor vehicle liability policy for the same reason that it can in this case succeed against the defendant.

The meaning to be attached to the words "arising out of" as they occur in the exclusion here in question has, of course, been the subject of much discussion in this case. Adamson C.J.M. has said that "The words are clear and must bear their own meaning. They refer to the immediate or proximate cause." On the other hand, the appellant contends that the words have a wider connotation and should be construed as meaning "originating from, incident to or having connection with the use of the vehicle", but that even if they bear the more restricted meaning the circumstances of the present case are such that the composite negligence of the taxi driver is not severable and that the proximate cause of the accident can, therefore, be said to have been the use and operation of the vehicle in stopping on the wrong side of the street. It is sufficient to say that the words "claims arising out of . . . the ownership, use or operation . . . of any motor vehicle" as used in this exclusion can only be construed as referring to claims based upon circumstances in which it is possible to trace a continuous chain of causation unbroken by the interposition of a new

act of negligence and stretching between the negligent use and operation of a motor vehicle on the one hand and the injuries sustained by the claimant on the other. In the present case the motor vehicle was stationary at the time of the accident and the chain of causation originating with its use was severed by the intervening negligence of the taxi driver whose failure to escort the boy across the street was the factor giving rise to the respondent's liability.

There is a clear distinction between this case and the cases of *Stevenson v. Reliance Petroleum Limited*[1] and *Irving Oil Company Limited v. Canadian General Insurance Company*[2]. In those cases the negligence had to do with the delivery of petroleum products from tank trucks by means of a mechanism that was a part of the truck itself and, therefore, the entire delivery operation was effected in the course of using the motor vehicles in question. In both those cases the ultimate damage was occasioned by the presence on the premises in question of petroleum products which had been deposited there through the negligent use of such a mechanism. In the present case, as has been said, the presence of the retarded child alone on the highway was not a circumstance arising out of the ownership, maintenance, use or operation of the respondent's vehicle but out of the taxi driver's failure to escort him to his home.

For the above reasons I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Thompson, Dilts, Jones, Hall & Dewar, Winnipeg.

Solicitors for the plaintiff, respondent: McArthur, Appleby, McArthur & Gillies, Winnipeg.

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[1] [1956] S.C.R. 936, 5 D.L.R. (2d) 673.
[2] [1958] S.C.R. 590, 14 D.L.R. (2d) 337.