

MOTOR VEHICLES: Financial Responsibility Act applies where judgment is in favor of bailor of automobile against bailee who damaged same through negligent operation.

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9/26/49

Mr. John H. Allison
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Department of Revenue
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, which request is as follows:

"The facts are as follows, according to the Answer and Counter-Claim of the Defendant. This Department has never seen the Petition. We quote:

"About July 6, 1948, Charles W. and Dorothy Maple delivered to the DeGrendele-McClintock Company, a Corporation, 304 South Kirkwood Road, a 1948 Willy Station wagon for repairs and, at the Plaintiff's request, said station wagon was repaired and the costs for said repairs was \$29.12. The delivery and request for repairs on the said station wagon was predicated upon the Defendant's delivering to the Plaintiff an automobile for Plaintiff's sole use and benefit while their aforesaid Willys Station wagon was being repaired. The Defendant entrusted to the Plaintiff a 1939 Chrysler automobile which, they claim, was in excellent mechanical and salable condition, for the sole use and benefit of the Plaintiff while their Willys automobile was being repaired, with the understanding that the Plaintiffs were to return the said 1939 Chrysler automobile to Defendants in the same condition as soon as Defendants repaired Plaintiff's automobile.

"Defendant states that Plaintiffs did not return the 1939 Chrysler automobile Defendant permitted Plaintiffs to use, in the same condition but, on the contrary, Plaintiffs caused said automobile to be damaged beyond repair."

"The case was tried in Division #4 of the Circuit Court of St. Louis County and nine jurors returned a verdict in favor of the Defendants, in the sum of \$350.00."

"The Defendants, DeGrendele-McClintock, Incorporated, through their attorney, want this Department to revoke the Plaintiffs' license to run a car or truck and, under the provisions of the Motor Vehicle Safety Responsibility Law, we do not think that comes within our jurisdiction, as our contention is--the Defendants were Bailors and the aforesaid damage to said Chrysler automobile does not come within the provisions of the Safety Responsibility Law; hence our request for an opinion."

The facts as presented indicate that the damaged automobile was the subject of a bailment. Litigation followed the return of the damaged automobile by the bailee, the result of which was a judgment in favor of the bailor, which judgment remains unsatisfied. The question is whether or not this is such an unsatisfied judgment as requires the commissioner to act under the Motor Vehicle Financial Responsibility Act.

Section 4(a) of this act, Laws of Missouri, 1945, page 1210, reads as follows:

"The commissioner also shall suspend the license and all registration certificates or cards and registration plates issued to any person upon receiving authenticated report, as hereinafter provided, that such person has failed for a period of 30 days to satisfy any final judgment in amounts and upon a cause of action, as hereinafter stated."

Section 1 of the act, Laws of Missouri, 1945, page 1209, defines the word "judgment" for the purpose of the act to mean:

"'Judgment.' Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on any agreement or settlement for such damages."

This section therefore provides that any final unsatisfied judgment upon a cause of action arising out of the use of any motor vehicle, for damages, is such a judgment as authorizes the commissioner to act under Section 4(a), supra.

Where the bailment and injury is such as is involved in this case, the gist of the bailor's cause of action is negligence, and negligence must be proved as the cause of the loss. See *Oliver Cadillac Co. v. Rosenberg*, 179 S.W. (2d) 476. Though the certified copy of the judgment in this cause indicates in no way the basis of recovery, an examination of the pleadings and the instructions given in this case clearly shows that it was the negligent operation of the automobile by the bailee which resulted in the damage to said automobile. Therefore, the judgment in this instance was upon a cause of action arising out of the use of a motor vehicle, and was such as authorizes the commissioner to suspend the bailee's license and registration certificate.

Section 8 of the act requires that only a certified copy of the judgment for damages be forwarded to the commissioner by the clerk of the court or the judge of the court if such court has no clerk. However, a judgment ordinarily will not indicate the nature of the cause of action upon which it was given. We therefore feel that it is proper for the commissioner, of necessity, to go outside the certified copy of the judgment in order to determine whether or not he has authority to act in that instance under the Motor Vehicle Financial Responsibility Act.

Mr. John H. Allison

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Conclusion.

It is, therefore, the opinion of this department that the Motor Vehicle Financial Responsibility Act is applicable in the case where the unsatisfied judgment is that in favor of the bailor of an automobile against the bailee who returns the automobile in a damaged condition, which damage arose out of the bailee's negligent operation of the automobile.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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RHV:ml