

Uniform Highway Traffic and Vehicles Act: Responsibility of Owner and Driver

(1962 Proceedings, pages 24, 75)

1. (1) Where the driver of a motor vehicle violates a provision of this Act or the regulations that relates to the operation, use or presence of a motor vehicle on a highway or in a public place, the registered owner of the vehicle is presumed to be guilty of the violation and shall incur the penalties provided therefor, unless he proves that the violation was not committed by him or by a person who had possession of the vehicle with his consent, either express or implied.

Liability of owner for violations of Act

(2) This section does not relieve the driver of a motor vehicle of liability for a violation committed by him or while the vehicle was in his possession.

Liability of driver

2. (1) When a motor vehicle is operated in violation of a provision of this Act or the regulations that relates to the operation, use or presence of a motor vehicle on a highway or in a public place by a person whose identity is unknown to the Registrar, the registered owner of the vehicle on the request of the Registrar or of a peace officer shall, within forty-eight hours of the request, supply the Registrar or the peace officer with the name and address of the person in charge of the vehicle at the time of the violation.

Duty of owner to furnish driver's name

(2) A registered owner who knows the name and address of the person in charge of the vehicle and refuses, fails, or neglects to supply such information within forty-eight hours after being so requested is guilty of an offence and liable on summary conviction to a fine of not more than dollars.

Penalty

3. (1) The owner, as well as the driver, of a motor vehicle is liable for injury, loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur.

Civil liability of owner

(2) Subject to subsection (3), a person operating a motor vehicle other than the owner thereof is presumed to have possession of the vehicle with the consent of the owner until the contrary is established.

Presumption as to owner's consent to possession

Idem

(3) Where the person operating a motor vehicle, other than the owner thereof, lives with the owner as a member of his family, he is presumed to have possession of the motor vehicle with the consent of the owner.

"owner" defined

(4) In this section, "owner", as applied to a vehicle, means,

- (a) the person who holds the legal title to the vehicle;
- (b) a person who is a conditional vendee, a lessee or a mortgagor and is entitled to be and is in possession of the vehicle; or
- (c) the person in whose name the vehicle is registered.

Burden of proof on owner and driver

4. (1) Where injury, loss or damage is sustained by any person by reason of the presence of a motor vehicle on a highway, the onus of proof that the injury, loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver.

Application of section

(2) This section does not apply in the case of a collision between motor vehicles on a highway or to an action brought by a person who is being transported in the vehicle without payment for that transportation.

Injuries to passenger

5. (1) No action lies against the driver or owner of a motor vehicle for the death of or for injury, loss or damage sustained or incurred by a person while a passenger in the motor vehicle without payment for the transportation or by him when entering or alighting from the motor vehicle unless the death, injury, loss or damage was caused or contributed to by gross negligence or wilful and wanton misconduct on the part of the owner or driver.

Gratuitous passenger

(2) This section does not relieve from liability a person transporting a passenger for hire or gain, or the owner or driver of a motor vehicle that is being demonstrated to a prospective purchaser.

Injury or loss caused by stolen car

6. Notwithstanding anything in this Act, no motor vehicle or the owner thereof or any surety for the owner is liable for injury, loss or damage caused by the negligent operation of the motor vehicle if it is proved to the satisfaction of the court that at the time the injury, loss or damage was caused the motor vehicle was operated by or under the control or in the charge of a person who had stolen the motor ve-

hicle, or where the motor vehicle was otherwise wrongfully in the possession of another person.

7. (1) Where a motor vehicle that is owned by a person who is not resident in the Province is operated on a highway in the Province by the owner or by a person who has possession of the motor vehicle with the consent of the owner or where a person who is not a resident of the Province operates a motor vehicle on a highway in the Province, the Registrar is deemed to be the agent of the owner or operator who is not so resident for the service of notice or process in an action in the Province for injury, loss or damage arising out of the presence, use or operation of the motor vehicle in the Province. Registrar as agent of non-resident owner

(2) Service of notice or process on the Registrar as such agent may be made by leaving a copy of it with him or at his office. Service of process on Registrar

(3) Service effected in accordance with subsection (2) is sufficient service if notice of the service and a copy of the notice or process are sent forthwith by registered mail to the defendant and the defendant's return receipt is filed with the prothonotary (registrar) or clerk of the court in which the action or proceeding is brought. Idem

(4) A judge of the court in which the action is pending may, on such terms as he considers just, order such continuance as he considers necessary to afford the defendant reasonable opportunity to defend the action. Continuance of action

8. (1) Where injury, loss or damage to person or property is caused by the negligent operation on a highway of a motor vehicle that is not registered under this Act, the plaintiff in an action to recover for that injury, loss or damage may make the vehicle, by its registration number or by a description of the vehicle sufficient to enable it to be identified, the defendant in the action and may obtain a writ of attachment of the motor vehicle under section 309. Action in rem against unregistered owner

(2) Any person claiming to be the owner or to have an interest in the motor vehicle may enter an appearance in the action and the *Judicature Act* and the *Rules of the Supreme Court* apply to him as if he had been made a party defendant. Appearance by owner

(3) If no person claiming to be the owner or to have an interest in the motor vehicle has entered an appearance in Default judgment and execution

the action, the plaintiff may at any time after the expiration of thirty days from the date on which the motor vehicle was attached, upon proving damages, obtain judgment and execution against the motor vehicle.

Attachment of
vehicle

9. (1) Where injury, loss or damage is incurred or sustained by a person by reason of the negligent operation of a motor vehicle upon a highway, the person incurring or sustaining the injury, loss or damage may, at or after the commencement of an action to recover damages for the injury, loss or damage, obtain from the prothonotary or clerk of the court a writ of attachment directed to the sheriff commanding him to attach, seize, take and safely keep the motor vehicle causing the injury, loss or damage to secure the amount of damages that may be recovered in the action and the costs and to return the writ forthwith to the court out of which the writ is issued.

Time for attach-
ment

(2) A writ of attachment shall not be obtained or issued after the expiration of thirty days from the day on which the injury, loss or damage was incurred or sustained.

Appearance by
owner

(3) A person claiming to be the owner or having any interest in the motor vehicle may enter an appearance in the action and the provisions of the *Judicature Act* and the *Rules of the Supreme Court* apply to him as if he had been made a party defendant.

Procedure for
attaching vehi-
cle

(4) No writ of attachment shall be issued unless the plaintiff, or someone on his behalf,

- (a)** files with the prothonotary or clerk an affidavit showing a cause of action and stating,
 - (i)** the time and place where the injury, loss, or damage was incurred or sustained,
 - (ii)** the approximate amount of the damage, and
 - (iii)** such information as will enable the motor vehicle to be identified; and
- (b)** files with the prothonotary or clerk a good and sufficient bond in favour of the sheriff approved by the prothonotary or clerk and conditioned for the payment of all costs and expenses incurred by the sheriff in the seizing and holding of the motor vehicle if the plaintiff does not prosecute his action or if the action is decided against him.

10. (1) Subject to subsection (2), the sheriff to whom a writ of attachment is directed shall immediately attach, seize, take and safely keep the motor vehicle to secure the amount of damages that may be recovered in the action and the costs of the action and those damages and costs constitute a lien on the motor vehicle whether or not the defendant is the owner of the motor vehicle or has any interest therein.

Seizure of vehicle under attachment

(2) The lien created under subsection (1) has priority over any other lien on the vehicle except a lien for repairs to the vehicle or a prior registered lien.

Priority of lien

11. Where a motor vehicle has been seized under a writ of attachment issued under this Act,

Release from attachment

(a) if the defendant is the registered owner of the motor vehicle and deposits with the sheriff a certificate under the hand of the Registrar that proof of financial responsibility had been filed by the owner under this Act before the cause of action arose; or

(b) if proof of financial responsibility has not been filed by the owner or if the defendant is not the owner of the motor vehicle but the owner or a person on his behalf files with the sheriff a bond in favor of the plaintiff executed by two sureties satisfactory to the sheriff or by an approved surety company and conditioned for payment of all damages and costs that may be recovered against the defendant,

the sheriff having the motor vehicle in his custody shall release the motor vehicle to the owner or his agent upon payment to the sheriff of his fees and expenses in connection with the attachment.

12. (1) Where a motor vehicle has not been released under section 11 and judgment is recovered by the plaintiff, the sheriff shall retain the vehicle under the writ of attachment for fifteen days after the date of the judgment and, if execution on that judgment is issued within fifteen days from the date of the judgment, may sell the vehicle in the manner in which other goods are sold under execution and shall apply the proceeds of the sale in the manner prescribed in this section.

Sale of vehicle after attachment

(2) The sheriff shall pay over to the plaintiff the money so recovered or a sufficient sum to discharge the amount di-

Disposition of proceeds of sale

rected to be levied, less the sheriff's fees, commission and poundage expenses.

Idem

(3) If, after satisfaction of the amount together with sheriff's fees, commission and poundage expenses, a surplus remains in the hands of the sheriff, he shall pay the surplus to the person entitled thereto.

Idem

(4) Where money is levied upon execution, the *Creditors Relief Act* does not apply to that portion of the money that is obtained by the levying on and selling of the motor vehicle under the execution.

Preservation of existing rights

13. Except as in this Act expressly provided, no right of any person to bring, prosecute or defend an action for damages for injury, loss or damage to person or property is affected.
