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THE FAMILY CAR DOCTRINE – A VALID DOCTRINE?

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ABSTRACT

The family car doctrine deals with penalizing the owner of a car for any damage caused by the car to any property, person or anything which would carry some monetary value. It lays emphasis on penalizing the owner of the car for being negligent in handing the responsibility of his or her car to a person not capable of taking reasonable care. The conclusion of the abstract states that the doctrine needs further research and should be amended efficiently.

INTRODUCTION



Family car doctrine is a law which makes the registered owner of the car liable for any accident taking place by the vehicle. According to the doctrine, it does not matter whether the car is being driven by the owner of the car or by any other person, if any misshaping is caused due to the reckless driving of the driver, then the registered owner of the car will also be liable for the accident vicariously. The registered owner of the car is punished for the accident irrespective of his presence because as soon as he gives his car to some other person or family member, a principal agent form of contract is established among the owner and the person driving the car. Therefore, the principal will be held liable for the act of his agent. But the question is whether the owner of the family car should be held liable for some other persons carelessness or not? The topic has been vividly discussed in the research paper further.

ESSENTIALS OF THE DOCTRINE

The doctrine imposes a lot of legal obligations on the owner of the family vehicle and imposes punishment on the owner of the vehicle for any mishappening caused by the vehicle to anybody. The following essentials are required for the doctrine to be applicable on the owner of the car -:

1. The car owned by the person should be a family car and should not be used for any commercial purposes. If the car is used for any commercial purpose, it should be proved at the time of the accident that the car was being used for personal purpose. The reason behind such evidence to state that the car was being used for the personal purpose at that moment is that when a car is used for commercial purpose, there is a master servant form of contract formed between the driver and the owner of the car and as per the law, the master cannot be held liable for the negligent act of the servant until and unless such act of the servant was performed on the instruction of the master whereas in case of the family car doctrine, there is a contract of agency when a car is being driven by any of the family member of the owner. In that case, the registered owner of the car will be held liable if the car meets with an accident because of the negligence of the owner's family member. Therefore, it is very necessary that the car should have been used for the personal purposes at the time of the accident to apply the family car doctrine.
2. The owner of the family car should voluntarily give permission to the person who was driving the car at the moment of the accident. If the person driving the car drives the car without the knowledge of the registered owner of the car, then the doctrine will not be applicable because the registered owner never gave the permission to the person to drive the car and hence, there would not be any contract of agency formed as the agent would never be directed by its principle.
3. The car used by the family member must only be a family car and not a commercial vehicle. As previously stated, that the relationship between the driver and the owner of

the car will become master servant relationship if the car would be a commercial vehicle, therefore the car must be a family vehicle.

4. The person driving the vehicle must be at fault to establish the doctrine of family car. The law determines that the person who is at fault will be the one who will be penalized and therefore it is must for the person to be negligent in order to establish the doctrine of family car.

LIABILITY UNDER FAMILY CAR DOCTRINE

The family car doctrine holds the owner of the car liable for any accident caused by the car driven by someone with his consent. The punishment can be severe or mild depending upon the damage caused in the accident. But there are certain exceptions to the family car doctrine. The exceptions to the doctrine are as follows -:

1. If the owner is not there in the car at the time of the accident ¹– If the registered owner is absent in the car during the time of the accident and the accident has happened due to the negligence of the person driving, then the liability of the accident will shift to the driver of the car and will be charged under imprisonment or fine as per the damage caused due to the accident. The car owner will only be responsible if the car was not in a good condition and the accident took place because of the poor condition of the car.
2. The owner is in the car during the time of the accident- In this case, if the owner is present in the car during the time of the accident and the accident is caused due to the negligence of the person driving the car, then the owner will only be held liable if he or she has directed the person to drive fast or in a negligent manner. ²The reason

¹ If the owner is not there available at <https://timesofindia.indiatimes.com/life-style/spotlight/is-a-car-owner-liable-for-an-accident-by-his-driver/articleshow/14602996.cms>

² The owner in the car available at <https://timesofindia.indiatimes.com/life-style/spotlight/is-a-car-owner-liable-for-an-accident-by-his-driver/articleshow/14602996.cms>

- behind such principle to be followed in terms of law is that a person who has not committed a crime cannot be punished. If a person is driving the car negligently and the owner is present in the car, then it is not his fault that the car met with an accident. Therefore, the person driving the car will only be charged for the offence.
3. The driver of the car should be trained- The driver of the car should be trained enough to drive a car without any problem. If the owner of the car employs a driver with less experience and whom a normal person of sound would not have employed as a driver, then the owner will also be vicariously liable for being negligent in employing a driver with insufficient skills.
 4. If the person driving the car is driving under the influence of alcohol- If the person driving the car is driving under the influence of alcohol, then the owner of the car will not be held liable for the accident and only the person driving the car will be held liable for being negligent in the accident and consuming alcohol while driving.

APPLICABILITY OF THE FAMILY CAR DOCTRINE IN INDIA



The family car doctrine is also followed in India. The law is similar to other states. The law holds the owner of the car to be vicariously liable for the accident if it is caused due to negligent act of the driver. Though, it varies from case to case. Every situation is different and has different set of circumstances according to which the dignified court decides whether to hold the owner of the car responsible for the negligence of the person driving his or her car or not. The court states that no innocent will be sent behind the bars and thus, holding somebody guilty for someone else's act is not justifiable under the court of law. In India, if a car is being legally driven by a person other than the owner of the car and the car meets with an accident, then the person driving the car will be held liable for the accident if the accident would have caused due to his or her negligence. The owner of the car will only be held liable if the owner had instructed the person to drive in a manner in which the car is bound to or is more likely to meet with an accident. In India, everything depends upon the circumstances which lead to the accident to happen. If the accident had taken place due to somebody else's negligence then the person who was not at fault

will not be held liable for the accident irrespective of the fact whether he was driving the car with the owner's permission or not. The primary evidence which determines the accused guilty of his action is the circumstantial evidence. However, if a car is being driven by a person who is not permitted to drive a vehicle and is still driving the permission with the permission of the owner of the car with the understanding that the person whom he or she is allowing to drive the car is not authorized by law to drive it, in such case the registered owner of the car will also be held liable in India because of being negligent to allow such person to drive a car who does not have authority to drive it in terms of law. The owner is believed to take due care of the car purchased by him. It is also believed that he will be able to maintain the car in an efficient way that there would not be any accident caused due to the poor maintenance of the car. If the accident happens due to the poor maintenance of the car, then the court has the full authority to hold the owner of the car responsible for being negligent in maintaining his car irrespective of the fact whether the car was being driven by someone else or not. Even though the person driving the car tried his best efforts to prevent the accident but still failed due to the maintenance of the car, the owner of the car will be held guilty by the court. Though if the car is purchased by the owner and it is used for commercial purposes, then the situation will differ. If there is a transport company and it orders one of its drivers to drive to a particular city to deliver some goods and the car meets with an accident while on the way, then the owner of the vehicle will be vicariously liable for the accident if the accident would have taken place due to the negligence of the driver. But, if the accident takes place because of the negligence of somebody else and the driver is seriously injured in the accident, he can hold the owner of the vehicle liable to pay compensation for the accident caused. The reason behind holding the owner of the car responsible is that it is the owner who has employed the driver and ordered him to drive the vehicle. It is also believed that the employer of the driver is richer than the driver and is therefore always held accountable to pay compensation for the damage caused to the victim. Therefore, as the contract between the owner and the person driving the vehicle changes with the usage of the vehicle, the penalties and punishment for the crime also changes. The commercial vehicle brings profit to the enterprise and therefore the owner of such vehicle should also be held liable for the damage caused by the driver whereas in case of personal vehicles where the car is being used by the family meets with an accident, it does not yield profit to the family and thus only the person driving the vehicle in India is held liable for the accident if the person driving is at fault. The car in case of accident is

seized by the police and the owner of the vehicle has to apply for bail of the vehicle to exonerate it from the police officials. The reason behind this is that if the car is left alone at the place of the accident then the person who is at fault may flee away with the vehicle which would further result in eradication of the evidence. Therefore, the vehicle is seized by the police and the owner needs to apply for its bail. The same procedure is followed in case of commercial vehicles also. If the driver of the commercial vehicle is at fault then both the commercial vehicle along with the driver will be taken into custody and will be brought to the police station. There, a case will be filed against the person at fault by the plaintiff and the owner of the vehicle will have to apply for the driver and the vehicle's bail. The driver of the vehicle will be booked under the sections mentioned in the Indian Penal Code for being negligent towards driving. Thus, as the owner of a family car had taken due care in maintaining his car and handing it over to some other person for a temporary period, the owner of the car could not be held liable for the accident as he had taken due care in maintaining the car and trusting the person who can handle the car with full commitment.

DIFFERENCE BETWEEN VICARIOUS LIABILITY AND FAMILY CAR DOCTRINE

Many people often get confused with vicarious liability as family car doctrine. The vicarious liability includes the family car doctrine. The vicarious liability is defined as holding a person liable for someone else's act. It could either be between an employer- employee, master- servant, board of directors of a company, agent- principal, owner- independent contractor³ etc. As the family car doctrine is based on the principle of vicarious liability, it can be stated that the family car doctrine is part of vicarious liability doctrine. But, unlike vicarious liability, the family car doctrine deals with holding the owner of the family car liable for the act of the negligent driving of the person. As stated above, the family car doctrine is established with the contract of agent and principal between the person driving the car and the registered owner of the vehicle.

Therefore, the concept of vicarious liability is applied in the family car doctrine to hold the person liable for being negligent. The family doctrine needs certain conditions to be fulfilled in order to sue a person for being negligent in handing over the responsibility of the vehicle to the

³ It could either be available at <https://blog.iplayers.in/vicarious-liability-case-master-servant-relationship-tort-law/amp/>

other person and causing an accident. Whereas in the doctrine of vicarious liability, the relation between the two people is pondered upon when deciding about the liability of the owner of the vehicle. If a driver meets with an accident by being negligent while driving at a high speed on being instructed by his owner, in such case the owner of the vehicle will be vicariously liable for the accident as the driver drove fast on the instruction of his owner and the accident took place in his or her course of employment. Therefore, vicarious liability revolves around the relationship between two persons whereas in the family car doctrine, it particularly focuses on the agent principal relationship between two people when a family car meets with an accident. Therefore, it can be stated that the family car doctrine is a part of the vicarious liability.

THE VALIDITY OF THE FAMILY CAR DOCTRINE

The family car doctrine is an accepted doctrine in majority part of the country. But there are some states which do not consider the doctrine to be legally justified. As stated, the doctrine aims at holding the owner of the family car liable for any accident caused by the person driving the family car with the consent of its owner. If a person meets with an accident because of his negligence in a family car of a different owner, then according to the doctrine, the owner will be vicariously liable. It is very debatable for the doctrine to be held valid because of its vague punishment. It is questionable whether a person should be held liable for somebody else's act. If a person meets with an accident in someone else's family car as it was not maintained properly or by his negligence, why should the owner of the car be held vicariously liable. Nobody wants to get into trouble and try their level best to get themselves away from falling into trouble. However, if such event takes place in which the owner of the car is not able to maintain the vehicle properly and the person driving the vehicle meets with an accident due to the poor condition of the vehicle, why should the owner be held liable? There could be many reasons due to which the owner of the family car was not able to maintain the vehicle. The owner of the family car might not be in a financially well condition to maintain the vehicle or purchase a new vehicle for himself. The owner may also not be aware of the poor condition of the vehicle or the

car might suddenly lose control due to any unforeseeable condition. There are also chances when the person driving the vehicle has been made aware by the owner of the family car about the poor condition of the vehicle and the person driving the car has met with an accident after being aware of the poor condition of the vehicle. In such cases, the owner is not at fault but is still made vicariously liable for being negligent in not taking care of the vehicle according to the family car doctrine. Even if the owner of the family car had made the driver of the family car aware about the consequences due to the poor condition of the car and still, he drives the car and meets with an accident, in that case it will be able for the owner of the family car to claim Volenti Non-Fit Injuria because it would be very difficult at court to prove that the driver of the family car had been notified about the poor condition of the vehicle before being allowed to drive the car. Another reason for the doctrine to be debatable is that why should someone else be held responsible for somebody else's act. The person driving the vehicle might have been negligent in driving the vehicle and the accident might have been prevented but still the owner of the car will be held liable for not being careful towards his car. Thus, punishing someone for an event which could not be forecasted by someone on the basis of the condition of the car or because of his negligence sounds against the law. It is believed that nobody should be punished for someone else's crime but in the case of the family car doctrine, a person is held liable for the act of other for event which cannot be foreseen completely in the upcoming future. Therefore, this doctrine is very debatable and there are many states in the country which do not follow this doctrine because of its different idea of penalizing the other person along with the offender.

ADVANTAGES OF THE FAMILY CAR DOCTRINE

The family car doctrine serves a lot of advantages to the society. The family car doctrine holds the owner of the family car liable for any accident caused by any other person driving with the consent of the owner. Though, the law is debatable on different grounds but it is undeniable that it has been successfully able to protect the people who are injured due to the negligence of a person. If the person is injured in an accident caused by a family car, then the person may be able to bring up the suit of the family car doctrine against the owner of the family car and the person driving the car. In this way, if the car is being driven by a minor who cannot be punished according to the law, then his parent or the owner of the family car will be liable to pay

compensation for the injuries caused by the minor to another person because it is assumed that the duty of care towards the minor was of his parent and he could not have been given the car to drive it as he was a minor. Therefore, the owner of the family car could be held liable for the offence of being negligent under the family car doctrine. It is believed that the family car is the asset of the owner and the owner is believed to take due care of its asset. Thus, if the owner fails to take due care of his asset and the family car meets with an accident, he is liable for the consequences. The family car doctrine has thus been successfully able to curb down the delegation of the family car to somebody else due to the fear of the accident caused by the person negligence. Therefore, a person will only give the vehicle to somebody else if he or she is very close to the person and the person knows that the person driving the vehicle is qualified enough to handle the vehicle and drive it in a professional way. But still, if the accident takes place due to the negligence of the person, the person who has received hurt is duly qualified to bring a law suit against the owner of the vehicle and the person driving it under the family car doctrine.

DISADVANTAGES OF THE FAMILY CAR DOCTRINE

As stated above that the family car doctrine is a very debatable doctrine due to the nature of its punishment of holding the owner of the car liable for the accident caused by any member of his family with his consent. Though, the car being driven by the person may be owned by the owner but it does not serve as a ground to hold the owner of the person liable for the accident. If a person is fully qualified and trained to drive a vehicle and later, he meets with an accident in someone else's car for being negligent, the owner of the car should not be held vicariously liable because it is impossible for the person to prognosticate that an accident can happen because of the person's negligence. For a person belonging to a less earning family, it will not be possible for every person to buy himself or herself a different car due to the shortage of money income. Therefore, if a person belongs to a less earning family and the family member fully qualified to drive the vehicle meets with an accident, in such a case it would be very unjustifiable to hold the owner of the car to be vicariously liable for the negligence of the family member as the accident could not be forecasted.

In our country, people have a assumption that the vehicle which is larger at size is often the wrongdoer. In such cases, without being at fault a person has to serve imprisonment or compensation without having committed any mistake. It does not matter whether what was the magnitude of negligence in the accident and who was at fault, the person driving the larger vehicle will be at fault and if it would be a family member driven by a driver, then the owner of the family vehicle would be asked to pay compensation for the accident without even being at fault. So, it is very difficult for us to follow the 'Family Car Doctrine' because the people in our country feel that the person who was driving the vehicle which is large at size must be the wrongdoer and hence, even though the family car doctrine being at practice, would be executed on a person who was not at fault and would have to pay compensation for an offence in which the owner or the driver of the family car had no fault in it.

REMEDY OF THE FAMILY CAR DOCTRINE

Every vehicle has its insurance to prevent themselves from paying for damages of the vehicle or the damage caused to the other person. Though it widely depends upon from person to person but almost every person gets themselves the benefit of insurance because it is a kind of necessity. The reason behind me to state it as a necessity is because whenever we are travelling on a road, we are assuming that there are chances of a person or us being at fault which would lead us to a fatal accident. Therefore, in such cases it is important for a vehicle and the person to be insured so that proper compensation could be provided for the damages of both the person and the vehicle. Every insurance company differs from its policies and rules which makes It very necessary for the person to opt for an insurance which not only insures the vehicle, but also the person hurt. In case of the applicability of the family car doctrine, if any person meets with an accident in a family car and causes hurt to somebody because of his or her negligence, then if the insurance company had signed a contract with the owner of the vehicle that it will provide compensation for the damages caused to a person then the insurance company will have to pay for the damages. Not only does the insurance company requires to pay for the damages, but also the party who has suffered damage can file a law suit against the accused under the family car doctrine for causing hurt due to negligence and either demand compensation or sue the person with imprisonment. Thus, under the family car doctrine, the owner of the car may provide

compensation to the grieved party as a form of compensation but if the grieved party wants to bring a law suit against the owner of the vehicle then it can do so by filing a suit against the accused in the court of law. However, our country has found the bigger vehicle to be at fault majority of the times which has further led to compensating the other party for the accident without being at fault. Therefore, the family car doctrine principle cannot be efficiently applied in our country. It is necessary for the plaintiff to establish that the car was being driven by the person with the consent of the owner. Without establishing that the car was being driven with the consent of the owner, the family car doctrine cannot be applied and the owner will not be held vicariously liable for the accident. Therefore, it is very difficult for a person to accuse someone under the family car doctrine as the essentials which are required to establish the doctrine will not be able to be prove very easily. Therefore, the doctrine has proven to be insufficient because in our country. the owner of the family car is generally not held liable for the accident because it will be very difficult to prove in the court that the essentials to establish the family court doctrine were present.

CONCLUSION

After having studied the topic completely, it can be concluded that it will be very difficult for the doctrine of family car to be applied in India due to the difficulty to establish its essentials and the corruption in the country. Our country has a very low literacy rate and not everyone in the country is aware about their rights and law. Therefore, as people do not know about their rights and law along with the poor financial condition of the people in India, they are either not able to file a law suit due to the money draining and time taking process or they do not know about what actions can be brought against the wrongdoer for a crime. It can also be stated that the family car doctrine is not totally appropriate and not every time an accident can be forecasted. If the accident could be forecasted then nobody would have allowed the accident to happen because nobody wants to invite trouble. Therefore, the punishment to hold the owner of the family car liable due to the inadequate probability of accident happening without the negligence of the owner is baseless and wrong. The assumption that people have that the larger sized vehicle is always at fault should be clear. The people should understand that not every time it is the mistake of a large sized vehicle in an accident and the suit should be filed against the wrongdoer on the

basis of negligence and not on the basis of the size of the vehicle. There are certain amendments which are required to be done to the family car doctrine. The doctrine should state that the owner is only vicariously liable towards a particular amount of money as per the damage caused. If anybody other than the owner of the vehicle is driving the vehicle and permanent damage is caused to the other person, then in that case the no fault liability principle should be applied on the discretion of both the parties. If the other party is not allowing to pay compensation for the damage caused to the other person irrespective of the other persons fault, then the case should be heard by court and the court should decide the amount of compensation which is to be provided to the other party on the basis of negligence and damage caused to the other party. Along with the difficulty in applying the family car doctrine, it is very much required in our country to educate about the people of their rights and law in the country so that they can take action against the wrongdoer to prevent themselves from being a victim of the corruption. Not every time the owner of the family car is negligent and the burden of proof should not always be on the larger vehicle. Even though the other party might have suffered injuries or permanent disabilities, it is not necessary that the other party in the accident will always have huge pockets. Therefore, both the parties should be heard properly and the decision should be made only on the basis of the circumstantial evidence. Therefore, I can conclude that it is very difficult for the family car doctrine to be applied in the country as it is very difficult to be proved that there was negligence on part of the owner.