

Regina v. Zwicker

[Indexed as: R. v. Zwicker]

17 O.R. (3d) 171
[1994] O.J. No. 197
Action No. C16529

**Court of Appeal for Ontario,
Lacourcière, Robins and Finlayson JJ.A.**

February 10, 1994

Road transport — Provincial offences — Operating motor vehicle without insurance — Word "owner" in s. 2 of Compulsory Automobile Insurance Act including "common law owner" and not restricted to "registered owner" — Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25, s. 2.

The appellant was charged with operating a motor vehicle without insurance contrary to s. 2(1)(a) of the Compulsory Automobile Insurance Act. She had bought the vehicle from a friend three weeks prior to being stopped, and had not yet registered herself as the owner pursuant to s. 11(2) of the Highway Traffic Act, R.S.O. 1990, c. H.8. She argued that only a "registered owner" could be guilty of the offence charged. The appellant was convicted and the conviction was upheld on appeal. She appealed further.

Held, the appeal should be dismissed.

The Compulsory Automobile Insurance Act is intended to ensure that every car operated in a province is insured. The term "owner" in s. 2(1) of the Act cannot be limited to "registered owner". "Owner" in that context includes "common law owner".

R. v. Sherman, [1972] 1 O.R. 503, 5 C.C.C. (2d) 247 (C.A.), distd

Other cases referred to

Honan v. Gerhold, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582, 3 N.R. 81; Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193 (C.A.) [affd [1978] 2 S.C.R. 342, 82 D.L.R. (3d) 449, 3 C.C.L.T. 316, 19 N.R. 209]

Statutes referred to

Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25, s. 2(1)

Highway Traffic Act, R.S.O. 1990, c. H.8, s. 11(1)(a), (2)

Motor Vehicle Accident Claims Act, R.S.O. 1970, c. 281, s. 3(3)

APPEAL from a judgment dismissing an appeal from conviction for operating a motor vehicle without insurance.

Munyonzwe Hamalengwa, for appellant.

Eric Siebenmorgen, for the Crown, respondent.

The judgment of the court was delivered orally by

ROBINS J.A.: — This is an appeal, with leave, from the decision of a provincial offences appeal court judge upholding the appellant's conviction on a charge of operating a motor vehicle without insurance contrary to s. 2(1)(a) of the Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25. This section provides that:

- 2(1) Subject to the regulations, no owner of a motor vehicle shall,
- (a) operate the motor vehicle; or
 - (b) cause or permit the motor vehicle to be operated, on a highway unless the motor vehicle is insured under a contract of automobile insurance.

Leave to appeal was granted on the following question:

Does the word "owner" as used in s. 2 of the Compulsory Automobile Insurance Act apply only to the "registered owner" of the motor vehicle?

On July 10, 1992, the appellant was driving her recently purchased Chevrolet Nova, licence plate 137 JNR, west on Danforth Avenue in Toronto when she was stopped by a police officer. Being unable to provide proof of insurance for the motor vehicle, she was given 48 hours within which to report to the police station with such proof. After the appellant failed to appear within the requisite time, the police twice contacted her by telephone. Finally, on August 5, 1992, a police officer attended at her home to investigate further the matter of her insurance coverage. The appellant admitted to the officer that she had never insured this vehicle and was unable to provide any proof of insurance. She was then charged with the offence here in issue.

At trial, the appellant testified that she had bought the vehicle from a friend about three weeks prior to being stopped on Danforth Avenue. Although she owned the vehicle when she was stopped on July 10, 1992, she had not registered herself as the owner at that time, pursuant to s. 11(2) of the Highway Traffic Act, R.S.O. 1990, c. H.8. The vehicle and licence plate number 137 JNR were registered to the appellant on July 13, 1992.

In this court, as in the courts below, the appellant relied upon *R. v. Sherman*, [1972] 1 O.R. 503, 5 C.C.C. (2d) 247, a decision of this court which, the appellant contends,

provides her with a complete defence to the charge. In that case, the word "owner", interpreted in the context of the Motor Vehicle Accident Claims Act, R.S.O. 1970, c. 281, was held to mean "registered owner" as opposed to "common law owner". This interpretation, the appellant says, is applicable to s. 2(1) of the Compulsory Automobile Insurance Act and, since she was not the "registered owner" of the motor vehicle on July 10, 1992, she cannot be guilty of the offence charged.

That argument cannot succeed. In our opinion, the interpretation of "owner" in *R. v. Sherman* is not applicable to s. 2(1) of the Compulsory Automobile Insurance Act. The word "owner" as used in this provision is not restricted to the "registered owner" of a motor vehicle but includes the "common law owner" as well.

R. v. Sherman was a case involving the interpretation of legislation which preceded the Compulsory Automobile Insurance Act, namely, the Motor Vehicle Accident Claims Act. Section 3(3) of that Act provided that:

3(3) Every owner of a motor vehicle who fails to produce evidence [of either insurance or fee payment made pursuant to other sections of the Act] . . . when requested to do so or within a reasonable time of such request is guilty of an offence . . .

This provision, as the court pointed out, had to be interpreted in the light of the purposes of the legislation. These purposes included the protection of the public from loss due to the negligence of an uninsured motorist by setting up a motor vehicle accident claims fund with a contributory fee. The Act required the owner to pay this fee or to have the vehicle insured and imposed a penalty for failing to do so. The scheme of the legislation was crucial to the construction of s. 3. As McGillivray J.A., speaking for the court, said at p. 506 O.R., p. 250 C.C.C.:

To lend any force to these provisions the police authorities must be able to determine the identity of the owner. The only way this can be assured is through the registration procedure. It follows in the opinion of the Court that "owner" as it appears in the Act must mean registered owner rather than owner at common law if any effect is to be given to this legislation.

The present statutory scheme governing automobile operation and insurance is significantly different than the scheme under consideration in *R. v. Sherman*. The current Highway Traffic Act (s. 11(1)(a)) requires that the vendor of a motor vehicle detach from the vehicle his or her number plates at the time of conveyance. Under the prior legislation, number plates were assigned and registered to the motor vehicle and, upon a transfer of ownership, would remain on the vehicle. The purchaser is now obliged to register the vehicle and licence plates in his or her name and to affix his or her own plates to the motor vehicle. The number plates appearing on a newly purchased vehicle must correspond to the new owner, regardless of whether the vehicle itself has been duly registered under the Highway Traffic Act. Registration is thus no longer the sole means

of identifying the owner of a given vehicle. The reasoning in *R. v. Sherman* is accordingly inapplicable to the present scheme.

The Compulsory Automobile Insurance Act is intended to ensure that every car operated in the province is insured. The term "owner" as it appears in s. 2(1) of this Act, in our view, cannot properly be limited solely to the "registered owner". To interpret "owner" in that manner would permit the person with all the rights of common law ownership to avoid corresponding responsibilities of ownership. Under the present Highway Traffic Act the appellant was required to register her ownership within six days of purchase. In direct contravention of this Act, she failed to do so. It would be anomalous indeed if a breach of the Highway Traffic Act could amount to a shield against liability under the Compulsory Automobile Insurance Act.

In sum, responsibility for ensuring that a motor vehicle is insured under a contract of insurance rests on the "owner". The "owner" in the context of the Compulsory Automobile Insurance Act includes the "common law owner". For the indicia of common law ownership reference may be made to cases such as *Honan v. Gerhold*, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582, and *Keizer v. Hanna* (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193 (C.A.). The appellant was the owner of her motor vehicle within the meaning of the Compulsory Automobile Insurance Act and was clearly prohibited from operating the vehicle without insurance on the day in question.

The appeal must be therefore dismissed.

Appeal dismissed.