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Lobo v. Tamco

Employers requiring their employees to occasionally use their own personal vehicles for work-related tasks might be liable for an accident which occurs when the employee is driving home from work.

In *Lobo v. Tamco* (2010 Cal.App. LEXIS 1229; published February 24, 2010), Daniel Lobo, a San Bernardino County deputy sheriff, was killed when an employee of Tamco, a steel bar manufacturer, allegedly drove his personal vehicle out of Tamco's driveway and collided with Deputy Lobo's motorcycle, resulting in fatal injuries. Deputy Lobo's widow and minor daughters filed a wrongful death lawsuit, alleging that the Tamco employee was acting in the course and scope of his employment at the time of the accident. Tamco filed a motion for summary judgment or summary adjudication, arguing that because the employee was driving **his personal vehicle on his way home**, Tamco could not be held vicariously liable for Deputy Lobo's death. The trial court granted Tamco's Motion, and Plaintiffs appealed.

Typically, employers are vicariously liable for tortious acts committed by employees during the course and scope of their employment. Under the "going and coming" rule, employers are generally **exempt** from liability when a tortious act is committed by employees while on their way to and from work. However, under the "required-vehicle" exception, where an employee's use of his or her own vehicle gives some "incidental benefit to the employer," and the employer "has reasonably come to rely upon its use and to expect the employee to make the vehicle available on a regular basis," the employer can be held liable for an employee's tortious actions during his or her commute.

Plaintiffs presented evidence that, as Tamco's manager of quality control, one of the employee's responsibilities was to "[a]nswer all customer complaints and if necessary, visit customers facilities to gain information and/or maintain customer relations." Notably, Tamco did **not** provide a company car for such tasks, and in fact required the employee to use his own car for such visits because his customer visits were too infrequent for Tamco to provide him with a company car.

The Court of Appeal found that requiring the employee to use his own car gave Tamco the "incidental benefit" of not having to provide him with a company car, while still allowing Tamco to respond promptly to customer complaints. As a result, there was a triable issue of fact as to whether the "required-vehicle" exception was applicable in this case. The Court of Appeal thus reversed the trial court's ruling as to Plaintiffs' motor vehicle and negligence claims against Tamco. The Court affirmed the lower court's ruling in favor of Tamco on a premises liability cause of action.

Lesson:

Accordingly, an employer should be aware of the risks involved when its personnel are regularly "expected" to use their own vehicles as part of their job duties, particularly those who use customer service representatives, managers, and inspectors for on-site visits or other work "in the field." Likewise, if an employer relies on lower-level employees to make deliveries using their own vehicles, however infrequently, the employer leaves itself open for potential exposure in the event of an accident which at first glance, would seem to happen outside the course and scope of employment.

This case is a reminder that employers should routinely examine their policies regarding use of personal vehicles and confirm they have appropriate insurance coverage in place.