

No. 83428-8

SUPREME COURT
OF THE STATE OF WASHINGTON

RIZWANA RAHMAN,

Respondent,

v.

STATE OF WASHINGTON,

Petitioner,

v.

MOHAMMAD SHAHIDUR RAHMAN, individually
and

MOHAMMAD SHAHIDUR RAHMAN and RIZWANA RAHMAN,
as a marital community,

Third Party Defendants.

SUPPLEMENTAL BRIEF OF RESPONDENT RIZWANA RAHMAN

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A. INTRODUCTION

Mohammad Rahman (Rahman) was engaged in his employer's business, at the express direction of his supervisor, when his negligent driving caused his wife, Rizwana, to suffer serious injuries. At the time she was injured, Rahman was acting within the scope of his employment.

The Court of Appeals correctly held the State liable for Rizwana's injuries: "Because Mohammad was clearly engaged in his employer's business when his negligence caused injury to Rizwana, Mohammad's employer, the Department of Ecology, is vicariously liable under the doctrine of respondeat superior as a matter of law." *Rahman v. State*, 150 Wn. App. 345, 359, 208 P.3d 566 (2009).

B. STATEMENT OF THE CASE

Rizwana relies on the undisputed facts as set forth in the Court of Appeals opinion. Basically, while working for the Washington State Department of Ecology (State), Rahman was assigned to drive a State vehicle from Olympia to Spokane in order to inspect a construction site. Without informing his employer, Rahman allowed his wife to accompany him on the trip. He was

not aware that he was violating any rules. He planned to drive directly to the site and then to return home. The couple was en route to Spokane when Rahman lost control of the vehicle, which struck a tree and rolled several times. Rizwana seeks to recover from the State for the serious injuries she suffered in the accident.

C. ARGUMENT

At issue is whether the Court of Appeals correctly held, as a matter of law, that the State is vicariously liable to Rizwana for the injuries caused by her husband's negligence.

Under the doctrine of respondeat superior, "an employer may be liable for its employee's negligence in causing injuries to third persons if the employee was within the 'scope of employment' at the time of the occurrence." *Breedlove v. Stout*, 104 Wn. App. 67, 69, 14 P.3d 897 (2001) (quoting *Dickinson v. Edwards*, 105 Wn.2d 457, 466, 716 P.2d 814 (1986)).

The test for determining if an employee is acting in the scope of employment is "whether the employee was, at the time, engaged in the performance of the duties required of him by his contract of employment, or by specific direction of his employer." *Greene v. St. Paul-Mercury Indem. Co.*, 51 Wn.2d 569, 573, 320 P.2d 311 (1958).

Further, "an employer is liable for acts of his employee within the scope of the latter's employment notwithstanding such acts are done in violation of rules, orders, or instructions of the employer." *Smith v. Leber*, 34 Wn.2d 611, 623, 209 P.2d 297 (1949).¹ And the employer is liable "if the act complained of was incidental to the acts expressly or impliedly authorized or indirectly contributed to the furtherance of the business of the employer." *Poundstone v. Whitney*, 189 Wash. 494, 499, 65 P.2d 1261 (1937).

Even if an employee combines his own business with that of his employer, the employer is to be held liable for the employee's negligent conduct "unless it clearly appears that the employee could not have been directly or indirectly serving his employer." *McNew v. Puget Sound Pulp & Timber Co.*, 37 Wn.2d 495, 497-98, 224 P.2d 627 (1950).

Rahman was driving to Spokane, as specifically directed by his employer, when the accident occurred. He was furthering the business of his employer within the scope of his employment. Thus, the State is liable for the injuries caused by his negligence.

¹The Ninth Circuit stated as follows: "Washington case law clearly indicates that an act done in violation of an express prohibition of the master can be within the scope of the servant's employment 'where such an act was done in conjunction with other acts which were within the scope of the duties an employee has been instructed to perform.'" *Pierson v. United States*, 527 F.2d 459, 464 (1975) (quoting *Smith v. Leber*, 34 Wn.2d 611, 209 P.2d 297 (1949)).

The Court of Appeals correctly applied *McNew, Smith, Dickinson*, and *Poundstone*, holding that "Mohammad was acting within the scope of his employment at the time of the accident, thereby rendering his employer vicariously liable for his negligence." *Rahman*, 150 Wn. App. at 357.

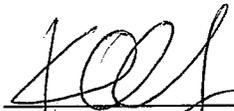
Accepting the State's position to the contrary would require this Court to overturn longstanding precedent.

D. CONCLUSION

The Court of Appeals decision should be affirmed in all respects, reiterating that the trial court is to (1) enter partial summary judgment in favor of Rizwana as to the State's liability, and (2) conduct further proceedings regarding her damages.

DATED this 27th day of January, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on January 29, 2010, I sent a true and correct copy of the Supplemental Brief of Respondent Rizwana Rahman by legal messenger to:

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