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SUPREME COURT
STATE OF WASHINGTON

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No. 83428-8

BY RONALD R. CARPENTER SUPREME COURT
OF THE STATE OF WASHINGTON

CLERK

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.

RESPONDENT RIZWANA RAHMAN'S ANSWER TO
WASHINGTON DEFENSE LAWYERS' AMICUS CURIAE BRIEF
AND TO
BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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A. INTRODUCTION

Respondent Rizwana Rahman submits the following answer to the amicus curiae briefs filed by Washington Defense Trial Lawyers (WDTL) and by the Washington State Association for Justice Foundation (WSAJ Foundation).

B. ARGUMENT

WDTL directs the Court to focus its inquiry “on the specific act that resulted in the alleged liability.” WDTL Br. at 1. It then contends the critical act was “Rahman’s decision to invite his wife to ride with him.” *Id.* And WDTL asserts that “[b]ecause this specific act was not undertaken in pursuit of his employer’s interests, Washington law and public policy do not support the application of vicarious liability in this case.” *Id.* at 2. WDTL would “reaffirm that employers cannot be held liable for unauthorized specific acts taken by their employees that do not benefit their employers.” *Id.* at 10-11.

WDTL’s argument rests entirely on an arbitrary characterization of Rahman’s trip to Spokane as a “general” act and his invitation to his wife as a “specific” act, but WDTL offers absolutely no legal basis for this argument. *Id.* at 5-9. In fact, Washington law neither defines nor distinguishes between

“general” and “specific” acts by employees. Rather, an employer is to be held liable for an employee’s negligence in causing injury to a third party¹ “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 employer-employee relationship “must exist *at the time, and in respect to the particular transaction out of which the injury arises.*” *Roletto v. Department Stores Garage Co.*, 30 Wn.2d 439, 442, 191 P.2d 875 (1948) (emphasis added).

WSAJ Foundation explains that “[t]he proper focus of the vicarious liability analysis should be on the conduct for which liability is imposed.” WSAJ Found. Br. at 13. Rahman’s invitation to ride along is not the conduct for which Rizwana seeks to recover. Instead, she would impose vicarious liability on the State for her husband’s negligent driving during the trip. The Court of Appeals correctly held that Rahman “was acting within the scope of his employment *at the time of the accident*, thereby rendering his

¹ WSAJ Foundation points out that there is no sound reason for treating a passenger differently from a non-passenger third party who is injured as a result of an employee’s negligence. WSAJ Found. Br. at 14.

employer vicariously liable for his negligence.”² *Rahman v. State*, 150 Wn. App. 345, 357, 208 P.3d 566 (2009) (emphasis added).

In addition, “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)). “[A]n 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 at 623. As the WSAJ Foundation accurately observes, if the rule were otherwise, employers could absolve themselves of any liability for their employees’ negligence by simply adopting a broad rule requiring due care. WSAJ Found. Br. at 13.

Finally, as a matter of public policy, employers are in the best position to educate their employees about the rules of employment and “to provide strong disincentives for

² WDTL argues that the Court of Appeals’ decision eliminates the distinction between Washington’s respondeat superior law and California’s enterprise liability theory. WDTL Amicus Curiae Br. at 9-10. But the Court of Appeals’ analysis is explicitly based on Washington precedent, including *McNew v. Puget Sound Pulp & Timber Co.* (1950), *Smith v. Leber* (1949), *Dickinson v. Edwards* (1986), and *Poundstone v. Whitney* (1937). *Rahman v. State*, 150 Wn. App. 345, 357, 208 P.3d 566 (2009).

noncompliance." *Id.* at 15. Employers ultimately control the manner, means, and terms of employment.

C. CONCLUSION

Under Washington law, employers must bear the cost of injuries to third parties that are caused by their employees' negligent acts. The State is vicariously liable to Rizwana for the injuries she suffered as a result of her husband's negligence.

DATED this 3rd day of May, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 3rd, 2010, I sent and correct copy of Respondent Rizwana Rahman's Answer to Washington Defense Lawyers' Amicus Curiae Brief and to Brief of Amicus Curiae Washington State Association for Justice Foundation by legal messenger to John Dittman and Melissa White at Cozen O'Connor; sent by fax and by US Mail to George Ahrend and Bryan Harnetiaux:

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