Case Evaluation

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LAW 531

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Imagine you own a taxi cab business - ABC Taxi. One evening, Melissa Smith stood outside her downtown hotel, hailing a cab. The driver of an ABC Taxi, Max Speed, came to a screeching halt at the curb. Ms. Smith opened the rear door of the taxi and began to climb inside. As she climbed inside, Ms. Smith placed her right hand on the roof of the car where the top of the door would close. Suddenly, the cab driver accelerated, causing the rear door to slam shut onto Ms. Smith's hand. Ms. Smith suffered broken bones in her right hand and wrist. She also suffered a neck injury as she was thrown against the back seat when the taxi lurched forward. Mr. Speed later explained that he accelerated suddenly to avoid being struck by a shuttle bus, which he thought was about to collide with the taxi when he saw it approaching very rapidly in his rearview mirror.

Write an evaluation of this case in a minimum of 1,400 words in which you include the following:

•Identify some of the potential torts that might arise from this business context.

•Explain whether or not the driver for the company, Max Speed, is liable for any of the injuries Ms. Smith suffered.

•Explain whether or not the company, ABC Taxi, is liable for any of the injuries Ms. Smith suffered.

•Discuss ways to prevent or mitigate the risk of the potential torts

The law of tort contains the obligations, rights and the remedies that are accorded by courts of law in cases so as to provide relief to the individual who may have suffered due to acts that are wrong of others (Abraham, 2002). In the law of Tort there are plaintiffs and defendants also called tort feasor. The plaintiff is the individual who suffers the injuries due to wrongful acts of others while the defendant is the person who has caused the plaintiff to suffer the injuries and is liable for damages. In this case Ms. Smith is the plaintiff because she got injured due to reckless behavior of Mr. Speed while Mr. Speed is the defendant because his reckless behavior resulted to Ms. Smith being injured and therefore action must be taken against him in a court of law. For a law of Tort to exist there are three things that must be established. First is that the plaintiff must demonstrate that the defendant had a legal duty to act in a certain manner. The plaintiff must then show that the defendant did breach the legal duty that he had to them. The plaintiff must then show that he/she suffered an injury or loss as a result of the defendant breaching their legal duty (Abraham, 2002).

The driver of the taxi was clearly driving recklessly which can be exhibited from the fact that when he came to pick her, he came to a screeching stop. For him to have to stop at a screeching stop it implies that he was speeding before he has even stop to pick Ms. Smith. He was in such a hurry that he did not let her to get into the car before he could start driving and that’s why he accelerated suddenly causing the rear door of the car to slam shut onto the hand of Ms. Smith. Ms. Smith therefore suffered the injuries to her hand and her neck because of the sudden acceleration. Mr. Speed claim that he accelerated suddenly to avoid being struck by a shuttle bus are not backed with evidences and hence cannot be taken as true. He is trying to use that excuse to cover up his actions that led to the injury of his passenger. The Tort that is clearly exhibited in this case is the Tort of negligence. This Tort is characterized by behaviors of an individual that creates unreasonable risks that can harm an individual and property. An individual is said to be acting negligently when their behavior departs from the ordinary expected behavior of a reasonable and prudent person in those circumstances. Individuals are required to use their common sense and their experiences in life to determine the proper degree of vigilance and care that they exhibit so that they avoid causing perils to others (Shavell, 1983). In this case the driver was negligent when he suddenly accelerated without allowing Ms. Smith to enter and settle. He ought to have used his common sense and also his experiences in life to realize that such actions are likely to cause harm to his passenger.

In the law of negligence, a neighbor to a person is determined by the activities that he undertakes at that given moment. This is because the damages are likely to be caused by the activities in question if they are done carelessly. For example, the neighbor to a company doing manufacturing is the consumers who are going to take that product and the neighbor to motorist are the other people using that road that he is travelling in. In this case Ms. Smith was neighbor to Mr. Speed. Mr. Speed therefore owed Ms. Smith a duty of care and he ought to have driven his taxi well so as to avoid injuring his customers.

As had been stated earlier there are three things that must be established in a law of tort. The first one is that the plaintiff must show that the defendant had a legal duty to act in certain manner. In this case Mr. Speed was supposed to allow Ms. Smith to enter before he could drive. He therefore had a legal duty to Ms. Smith of allowing her to enter into the car. The second thing that should be established is whether the defendant breached their legal duty. In this case Mr. Speed breached this duty but not allowing Ms. Smith to enter the car before he could accelerate. The third thing is to establish whether plaintiff suffered loss as a result of the breach of duty. In this case Ms. Smith suffered a loss because her hand broke and her neck got injured during the process.

Vicarious liability arises in a situation where a tort is committed by an employee of a company when the employee is performing his duties of employment. This means that there should be direct and close connection between the harmful act that has been committed and what the employee was employed to do (Priest, 1987). In this case the employer is treated as if he had also committed that act. This therefore implies that in situations of vicarious liability, a third party can bring the claim against both the employee and the employer. The company, ABC Taxi has vicarious liability toward Ms. Smith. Mr. Speed who is one of its employees acted negligently toward Ms. Smith and caused injury to her. Ms. Smith can therefore take legal action against Mr. Speed and also against ABC Taxi Company.

In the law of tort an individual is awarded damages which are basically the money the plaintiff is paid as compensation for the injury or loss that they have suffered. The rules for the damages vary depending on the type of claim at hand (Landes & Posner, 1984). In this case the damages awarded would be compensatory damages. The compensatory damages are further categorized into special damages which are economic losses suffered by the plaintiff such as their loss of earnings, damage of their property and medical expenses that they may incur. Ms. Smith incurred medical losses because of the broken hand and the injured neck. She would also want to be compensated for the economic losses that she would incur because she wouldn’t be able to perform her daily activities. The other category is general damages and they are noneconomic damages such as suffering and pain or emotional distress (Goldberg, 2005).

A company can take a number of measures in order to mitigate itself against the losses caused by the risk of tort. One of such ways is to use insurance. Insurance involve transferring the risk to a third party such that if the loss occurs as a result of the insured event, it is the insurance company that will pay the injured person. In this case we saw that the mistakes committed by the employee would result to the company being held liable for the action of the employee. The company can therefore take insurance and therefore transfer the costs that they could have incurred to the insurance company (Landes & Posner, 1984).

Companies that also want to reduce losses arising from tort can do due diligence before employing it employees. This involves checking the employee’s background so as to establish whether they have any criminal record and hence are likely to cause injuries to third parties such as customers. The company can also do continuous training of it so as to make them understand that their actions can cause the company to lose money and also to improve on their skills. A company can also mitigate itself against this tort by maintaining the equipment that they are using in good condition. By maintaining the equipment that they are using in good condition will reduce instances whereby an individual suffers injury as a result of poorly maintained equipment of the company. The company will therefore not be required to make compensation to anyone.

References

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