

A QUESTION OF PERMISSION

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Many old car cases involve disputes with insurance companies over whether a certain accident or other loss was covered. The insured (or other interested person) argues that the company should pay for the damages, while the insurer argues that the loss did not fall within the particular policy's coverage.

Some of these cases involve situations where the driver of the old car was not the policyholder, but someone who allegedly was operating the car with the policyholder's permission. In such cases, two questions arise: (1) did the policy cover permissive use, and, if so, (2) did the driver have the requisite permission.

A recent case involving such questions was *Adamski v. Miller*, decided on May 3, 1994 by the Superior Court of Pennsylvania.

According to the court, on July 19, 1984, a motorcycle owned and operated by David Adamski collided with a 1973 Chevrolet Nova owned by Madalyn Gower and driven by Ronald Miller. Gower's daughter Patricia Dooley was a passenger in the Nova at the time of the accident.

Adamski and his wife sued Miller and Gower. Although the claim against Gower was voluntarily discontinued, the claim against Miller went to trial. The jury ruled for the Adamskis and against Miller for \$305,000.

The Adamskis then sued Allstate Insurance Company, claiming that Miller was insured under Allstate's policy covering Gower's Nova. The policy defined "persons insured" as certain persons using the Nova, specifically Gower and her husband, "any resident relative," and "any other person with [the Gowers'] permission." Allstate denied coverage, arguing that Miller was not a permissive user of the Nova at the time of the accident.

The trial judge disagreed with Allstate and found that Miller had the Gowers' implied permission to use the Nova. It also found in the alternative that Miller had a "reasonable belief" at the time of the accident that he had the Gowers' consent. It therefore ruled for the Adamskis and against Allstate for \$50,000, the limits of Allstate's liability under the policy. Allstate appealed.

On appeal, the Superior Court ruled for Allstate, reversing the trial court's ruling. The Superior Court noted that, when evaluating such a "permission" clause in an insurance policy, the permission given to a driver by the insured may be either express (clearly and affirmatively communicated) or implied. Since it was undisputed that Miller did not have the Gowers' express consent to drive the Nova, coverage could only be found if they had implicitly authorized him to use it.

The court noted that implied permission may arise from the relationship of the parties or from a course of conduct in which the parties have mutually acquiesced. However, under Pennsylvania law, permission cannot be implied simply from possession and use of the vehicle without the knowledge of the insured. Moreover, permission requires something beyond mere tolerance without taking steps to prevent the use of the automobile. The key is whether the insured said or did something that warranted the belief that the use was with the insured's consent.

The court ruled that Miller did not have the Gowers' implied permission to drive the Nova at the time of the accident. It stated that the fact that Miller drove the Nova to and from work and other locations was irrelevant unless the Gowers, as the insureds, had actual knowledge of such use. To the contrary, the evidence indicated to the

court that the Gowers' knew of only one prior occasion when Miller drove the vehicle. It concluded that their knowledge of one-time usage did not amount to a "course of conduct" sufficient to infer implied permission to drive the Nova. This was so even though the Gowers knew that their daughter resided with Miller and that Miller did not possess his own vehicle.

The court further stated that Miller's "reasonable belief" that he had the Gowers' permission to drive the Nova at the time of the accident was irrelevant here, because the Allstate policy contained no such "reasonable belief" provision or exclusion. What the policy did say was that, unless Miller had the Gowers' express or implied permission to use the car, Allstate would not be liable.

The Superior Court's ruling in favor of Allstate was not unanimous, however. One judge filed a dissenting opinion, arguing that the facts supported the lower court's finding of implied permission. The dissenter pointed to the occasion prior to the accident when Gower had observed Miller driving the Nova. Neither during a short conversation Gower and Miller had at that time, nor at any point thereafter, did Gower tell Miller that he was not permitted to use the car. The dissenter argued that Gower's failure to object to Miller's driving the Nova, once she knew that he did so, operated as implied permission.

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