STATE OF MICHIGAN

COURT OF APPEALS

BARBARA J. HILL,

Plaintiff-Appellant,

v

AGENCY RENT-A-CAR,

Defendant-Appellee,

and

PATRICK WILSON,

Defendant.

UNPUBLISHED
August 9, 1996

No. 176184
LC No. 92-213875

Before: Young, P.J., and Holbrook, Jr., and J. Richard Ernst,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a Wayne Circuit Court order vacating the arbitration award rendered in plaintiff's favor in this automobile negligence case. We reverse and reinstate the arbitration award.

Where a court finds that an arbitration panel exceeded its powers, the court may vacate the arbitration award. MCR 3.602(J)(1)(c). An arbitration panel exceeds its powers whenever it acts beyond the material terms of the contract from which it primarily draws its authority, or in contravention of controlling principles of law. *Gordon Sel-Way Inc v Spence Brothers Inc*, 438 Mich 488, 496-497; 475 NW2d 704 (1991), citing *Detroit Automobile Inter-Insurance Exchange v Gavin*, 416 Mich 407; 331 NW2d 418 (1982). Any legal error in this respect by the arbitration panel must be clear from the face of the award and must be so material or substantial as to have governed the award. *Gordon Sel-Way Inc, supra*.

The arbitration agreement between the parties provided, in pertinent part:

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* Circuit judge, sitting on the Court of Appeals by assignment.

> The arbitration will be held in accordance with the usual rules governing procedure and admission of evidence in Courts of law and under the laws of the State of Michigan.
>
> The arbitrators shall hear and determine the issues of tort liability and allowable damages under MCLA 500.3135. The arbitrators shall have no power to decide any issue of coverage pertaining to this cause of action.

Plaintiff relies on *League General Ins Co v Budget Rent-A-Car of Detroit*, 172 Mich App 802; 432 NW2d 751 (1988), which dealt with the issue of coverage under a no-fault insurance policy. Given that the parties' arbitration agreement limited the arbitrators' decision in this case to tort liability and allowable damages, and specifically precluded the arbitration panel from deciding any issue regarding insurance coverage, we find plaintiff's reliance on *League General* to be misplaced.

In Michigan, the owner of a negligently driven motor vehicle is liable for any resulting injury, unless the vehicle was driven without the owner's express or implied consent or knowledge. MCL 257.401; MSA 9.2101. The term "consent" must be construed to effectuate the underlying policy of the owner's civil liability statute, which is to place the risk of damage or injury upon the person who has ultimate control of the vehicle, the owner. *Cowan v Strecker*, 394 Mich 110, 115; 229 NW2d 302 (1975), citing *Roberts v Posey*, 386 Mich 656; 194 NW2d 310 (1972). To effectuate this public policy, a car driven upon a public highway in this state gives rise to a rebuttable presumption that the car is being driven with the owner's consent. *Delaney v Burnett*, 63 Mich App 639; 234 NW2d 741 (1975). Contrary to defendant Agency Rent-A-Car's claim, the presumption of consent arises from the mere fact that the car was being driven on the highway, and it is the owner's burden to rebut that presumption. See *Roberts*, *supra* at 663.

Defendant Agency Rent-A-Car argues, and the circuit court agreed, that the express provision of the rental agreement, which prohibited use of the vehicle by anyone under twenty-one years of age, was sufficient to rebut any presumption that it had consented to defendant Wilson's operation of the vehicle. We disagree.

> [W]hen an owner willingly surrenders control of his vehicle to others he 'consents' to assumption of the risks attendant upon his surrender of control *regardless of admonitions which would purport to delimit his consent.* It must be so, or the statutory purpose would be frustrated. [*Cowan*, *supra* at 115. Emphasis added.]

Here, Agency Rent-A-Car, as owner of the vehicle, failed to rebut the presumption of consent. No facts have been established that defendant Wilson was denied permission to drive the vehicle by Agency Rent-A-Car's permittee. Cf. *Caradonna v Arpino*, 177 Mich App 486; 442 NW2d 702 (1989); *Fout v Dietz*, 75 Mich App 128; 254 NW2d 813 (1977), aff'd 401 Mich 403; 258 NW2d 53 (1977). Accordingly, because the arbitration panel's decision was consistent with the

controlling precedent of *Delaney*, *Cowan*, and *Roberts*, the circuit court erred in vacating the arbitrators' decision to hold defendant Agency Rent-A-Car liable for plaintiff's injury.

Reversed. The arbitration award is reinstated.

/s/ Robert P. Young
/s/ Donald E. Holbrook, Jr.
/s/ J. Richard Ernst