

Shikha v. Lyft, Inc.,

No. B321882, 2024 Cal. App. LEXIS 316 (Ct. App. May 17, 2024)

Generally, there is no duty to protect others from the conduct of third parties unless there is a special relationship. If the court determines there is a special relationship between parties, the court must then consult the factors described in *Rowland v. Christian* to determine whether relevant policy considerations counsel limiting that duty.

FACTS/PROCEDURE

In February 2020, Abdu Lkader Al Shikh, was working as a Lyft driver when he accepted a ride request through the Lyft app from passenger Ricky A. Alvarez. During the ride, and without warning or provocation, the passenger attacked him, stabbing his hands and legs. Unbeknownst to Al Shikh, the passenger had a prior criminal record.

In April 2020, Al Shikh filed a complaint asserting three causes of action against Lyft: (1) failure to provide workers' compensation insurance; (2) negligence; and (3) failure to provide a safe place of employment. On March 22, 2022, Plaintiff voluntarily dismissed the third cause of action. Lyft moved for judgement on the pleadings on the first two causes of action, asserting it had no legal duty to conduct background checks on passengers and therefore was not negligent.

The trial court granted Lyft's motion, concluding Al Shikha could not establish a claim for negligence as a matter of law because Lyft lacked a statutory or common law duty to conduct criminal background checks on passengers. The court also determined that the Investigative Consumer Reporting Agencies Act (ICRAA) prohibits Lyft from conducting background checks on passengers. Plaintiff appealed.

HOLDING/DISCUSSION

Holding: Affirmed. To establish a cause of action for negligence, a plaintiff must show that the defendant had a duty to use due care, that he breached that duty, and the breach was the proximate or legal cause of the resulting injury. Generally, there is no duty to protect others from the conduct of third parties, however, an exception exists where a "special relationship" exists between the defendant and the victim whereby the relationship gives the victim a right to expect protection from the defendant. Even when a "special relationship" exists, several considerations can limit the duty.

Generally, there is no duty to protect others from others unless there is a special relationship, *Regents of Univ. of Cal. v. Superior Court*, 4 Cal. 5th 607, 627 (2018). If the court determines that there is a special relationship between the parties, the court must then the court must then consult the factors described in *Rowland v. Christian*, 69 Cal. 2d 108(1968) to determine whether relevant policy considerations counsel limiting that duty. Lyft concedes that it was in a special relationship with Al Shikha when the attack occurred.

Prior to evaluating the instant case with the Rowland factors, the court identified the specific duty Al Shikha asserts Lyft should undertake, which was to warn drivers that a potential rider did not pass a criminal background screening and allow the driver to have the choice of accepting the ride or not.

In assessing the *Rowland* factors in cases involving a defendant's duty to prevent third party criminal conduct, courts have employed a “sliding-scale balancing formula”, *Hanouchian v. Steele* (2020) 51 Cal.App.5th 99. Past California cases have looked primarily to a number of factors, including “(1) the degree of foreseeability that the danger will arise on the business's premises and (2) the relative burden that providing a particular precautionary measure will place upon the business”, *Verdugo v. Target Corp.*, 59 Cal. 4th 312, 338 (2014). These decisions implicitly recognize that, in the absence of such heightened foreseeability, the determination whether a business should be required to provide a costly or burdensome precautionary safety measure to protect against potential future third party criminal conduct should more appropriately be made by the Legislature rather than by a jury applying a general reasonableness standard in a particular case” (*Id.* at 338–339).

The court concluded that conducting criminal background checks on all passengers would be highly burdensome on Lyft a financial and logistical sense, but also would allow for significantly negative social costs in creating an obligation in excluding potential passengers due to their prior criminal histories. Al Shikha did not establish heightened foreseeability as he relied on documents from Lyft’s Community Safety Report that were not presented to the trial court.

Setting aside the heightened foreseeability test, the *Rowland* factors still support a limitation on duty. The first factor was whether a reasonable rideshare company could foresee that its failure to perform background checks on all passengers could result in a passenger harming a driver. The court determined that it was unclear if the complaint’s allegations would have risen to the level of prior caselaw foreseeability. The second foreseeability factor was the degree of certainty that the plaintiff suffered injury. It was not considered an issue as Al Shikha’s injuries were undisputed. The third foreseeability factor is the closeness of the connection between the defendant’s conduct and the injury suffered. The court found minimal causal nexus between Lyft’s failure to obtain background checks on all passengers and a passenger violently attacking a driver. Moreover, “Criminal background check reports on every prospective rider would not necessarily provide information from which either Lyft or individual drivers could reliably decide whether a potential passenger poses a threat of violence to the driver”, *Shikha v. Lyft, Inc.*, at 41.

The court stopped the analysis of the *Rowland* factors after the first three foreseeability factors asserting the policy “factors serve to assess whether, *despite* the foreseeability factors weighing in favor of recognizing a duty of care, public policy requires a different result”, *Shikha v. Lyft, Inc.*, at 43 (Ct. App. May 17, 2024).

Ultimately, the court found, among other things, that conducting criminal background checks on all passengers would be highly burdensome for Lyft and the plaintiff had not established the heightened foreseeability necessary to impose a duty on Lyft to conduct checks on all passengers. Absent duty, plaintiff’s claims failed.