100 Phil. 757

[G.R. No. L-8169. January 29, 1957]

THE SHELL COMPANY OF THE PHILIPPINES, LTD., PETITIONER, VS. FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY COMMERCIAL CASUALTY INSURANCE CO., SALVADOR SISON, PORFIRIO DE LA FUENTE AND THE COURT OF APPEALS (FIRST DIVISION), RESPONDENTS.

D E C I S I O N

PADILLA, J.:

Appeal by certiorari under Rule 46 to review a judgment of the Court of Appeals which reversed that of the Court of First Instance of Manila and sentenced "* * * the defendants-appellees to pay, jointly and severally, the plaintiffs-appellants the sum of P1,651.38, with legal interest from December 6, 1947 (Gutierrez *vs.* Gutierrez, 56 Phil., 177, 180), and the costs in both instances."

The Court of Appeals found the following:

> Inasmuch as both the Plaintiffs-Appellants and the Defendant-Appellee, the Shell Company of the Philippine Islands, Ltd. accept the statement of facts made by the trial court in its decision and appearing on pages 23 to 37 of the Record on Appeal, we quote hereunder such statement:
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> "This is an action for recovery of sum of money, based on alleged negligence of the defendants.
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> "It is a fact that a Plymouth car owned by Salvador R. Sison was brought, on September 3, 1947 to the Shell Gasoline and Service Station, located at the corner of Marques de Comillas and Isaac Peral Streets, Manila, for washing, greasing and spraying. The operator of the station, having agreed to do service upon payment of P8.00, the car was placed on the hydraulic lifter under the direction of the personnel of the station.

"What happened to the car is recounted by Perlito Sison, as follows:

> 'Q. Will you please describe how they proceeded to do the work?
> A. Yes, sir. The first thing that was done, as I saw, was to drive the car over the lifter. Then by the aid of the two grease-men they raised up my car up to six feet high, and then washing was done. After, washing the next step was greasing. Before greasing was finished, there is a part near the shelf of the right fender, right frontfertder, of my car to be greased, but the grease-men cannot reach that part, so the next thing to be done was to loosen the lifter just a few feet lower. Then upon releasing the valve to make the car lower, a little bit lower …
> Q. Who released the valve?
> A. The greaseman, for the escape of the air. As the escape of the air is too strong for my ear I faced backward. I faced toward Isaac Peral Street, and covered my ear. After the escape of the air has been finished, the air coming out from the valve, I turned to face the car and I saw the car swaying at that time, and just for a few second the car fell., (t.s.n., pp. 22-23.)

The case was immediately reported to the Manila Adjustor Company, the adjustor for the Firemen's Insurance Company and the Commercial Casualty Insurance Company, as the car was insured with these insurance companies. After having been inspected by one Mr. Baylon, representative of the Manila Adjustors Company, the damaged car was taken to the shops of the Philippine Motors, Incorporated, for repair upon order of the Firemen's Insurance Company and the Commercial Casualty Company, with the consent of Salvador R. Sison. The car was restored to running condition after repairs amounting to P1,651.38, and was delivered to Salvador R. Sison, who, in turn made assignment of his rights to recover damages in favor of the Firemen's Insurance Company and the Commercial Casualty Insurance Company.

"On the other hand, the fall of the car from the hydraulic lifter has been explained by Alfonse M. Adriano, a greaseman in the Shell Gasoline and Service Station, as follows:

‘Q.	Were you able to lift the car on the hydraulic lifter on the occasion, September 3, 1947?
A.	Yes, sir.
Q.	To what height did you raise more or less?
A.	More or less five feet, sir.
Q.	After lifting that car that height, what did you do with the car?
A.	I also washed it, sir.
Q.	And after washing?
A.	I greased it.
Q.	On that occasion, have you been able to finish greasing and washing the car?
A.	There is one point which I could not reach.
Q.	And what did you do then?
A.	I lowered the lifter in order to reach that point.
Q.	After lowering it a little, what did you do then?
A.	I pushed and pressed the valve in its gradual pressure.
Q.	Were you able to reach the portion which you were not able to reach while it was lower?
A.	No more, sir.
Q.	Why?
A.	Because when I was lowering the lifter I saw that, the car was swinging and it fell. THE COURT. Why did the car swing and fall?
WITNESS:	‘That is what I do not know, sir.’ (t.s.n., p. 67.)”

The position of Defendant Porfirio de la Fuente is stated in his counter-statement of facts which is hereunder also reproduced:

> “In the afternoon of September 3, 1947, an automobile belonging to the plaintiff Salvador Sison was brought by his son, Perlito Sison, to the gasoline and service station at the corner of Marques de Comillas and Isaac Peral Streets, City of Manila, Philippines, owned by the defendant The Shell Company of the Philippine Islands, Limited, but operated by the defendant Porfirio de la Fuente, for the purpose of having said car washed and greased for a consideration of P8.00. (t.s.n., pp. 19-20.) Said car was insured against loss or damage by Firemen’s Insurance Company of Newark, New Jersey, and Commercial Casualty Insurance Company jointly for the sum of P10,000 (Exhibits “A”, “B”, and “D”).
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> “The job of washing and greasing was undertaken by defendant Porfirio de la Fuente through his two employees, Alfonso M. Adriano, as greaseman and one surnamed de los Reyes, a helper and washer (t.s.n., pp. 65-67). To perform the

> job the car was carefully and centrally placed on the platform of the lifter in the gasoline and service station aforementioned before raising up said platform to a height of about 5 feet and then the servicing job was started. After more than one hour of washing and greasing, the job was about to be completed except for an ungreased portion underneath the vehicle which could not be reached by the greasemen. So, the lifter was lowered a little by Alfonso M. Adriano and while doing so, the car for unknown reason accidentally fell and suffered damage to the value of P1,651.38 (t.s.n., pp. 65-67).
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> "The insurance companies after paying the sum of P1,651.38 for the damage and charging the balance of P100.00 to Salvador Sison in accordance with the terms of the insurance contracts, have filed this action together with said Salvador Sison for the recovery of the total amount of the damage from the defendants on the ground of negligence (Record on Appeal, pp. 1-6).
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> "The defendant Porfirio de la Fuente denied negligence in the operation of the lifter in his separate answer and contended further that the accidental fall of the car was caused by unforseen event (Record on Appeal, pp. 17-19)."

The owner of the car forthwith notified the insurers who ordered their adjustor, the Manila Adjustors Company, to investigate the incident and after such investigation the damaged car, upon order of the insurers and with the consent of the owner, was brought to the shop of the Philippine Motors, Inc. The car was restored to running condition after repairs thereon which amounted to P1,651.38 and returned to the owner who assigned his right to collect the aforesaid amount to the Firemen's Insurance Company and the Commercial Casualty Insurance Company.

On 6 December 1947 the insurers and the owner of the car brought an action in the Court of First Instance of Manila against the Shell Company of the Philippines, Ltd. and Porfirio de la Fuente to recover from them, jointly and severally, the sum of P1,651.38, interest thereon at the legal rate from the filing of the complaint until fully paid, and costs. After trial the Court dismissed the complaint. The plaintiffs appealed. The Court of Appeals reversed the judgment and sentenced the defendant to pay the amount sought to be recovered, legal interest and costs, as stated at the beginning of this opinion. In arriving at the conclusion that on 3 September 1947 when the car was brought to the station for servicing Porfirio de la Fuente, the operator of the gasoline and service station, was an agent of the

Shell Company of the Philippines, Ltd., the Court of Appeals found that—

> * * * De la Fuente owed his position to the Shell Company which could remove him or terminate his services at any time from the said Company, and he undertook to sell the Shell Company's products exclusively at the said Station. For this purpose, De la Fuente was placed in possession of the gasoline and service station under consideration, and was provided with all the equipments needed to operate it, by the said Company, such as the tools and articles listed on Exhibit 2 which included the hydraulic lifter (hoist) and accessories, from which Sison's automobile fell on the date in question (Exhibits 1 and 2). These equipments were delivered to De la Fuente on a so-called loan basis. The Shell Company took charge of its care and maintenance and rendered to the public or its customers at that station for the proper functioning of the equipment. Witness Antonio Tiongson, who was sales superintendent of the Shell Company, and witness Augusto Sawyer, foreman of the same Company, supervised the operators and conducted periodic inspections of the Company's gasoline and service stations, the service station in question inclusive. Explaining his duties and responsibilities and the reason for the loan, Tiongson said: "mainly on the supervision of sales or (of) our dealers and routinary inspection of the equipment loaned by the company" (t.s.n., 107); "we merely inquire about how the equipments are, whether they have complaint, and whether if said equipments are in proper order * * *", (t.s.n., 110); station equipments are "loaned for the exclusive use of the dealer on condition that all supplies to be sold by said dealer should be exclusively Shell, so as a concession we loan equipments for their use * * *," "for the proper functioning of the equipments, we answer and see to it that the equipments are in good running order and usable condition * * *," "with respect to the public." (t.s.n., 111-112). De la Fuente, as operator, was given special prices by the Company for the gasoline products sold therein. Exhibit 1—Shell, which was a receipt by Antonio Tiongson and signed by De la Fuente, acknowledging the delivery of equipments of the gasoline and service station in question was subsequently replaced by Exhibit 2—Shell, an official form of the inventory of the equipment which De la Fuente signed above the words: "Agent's signature". And the service station in question had been marked "SHELL, and all advertisements therein bore the same sign.
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> * * *. * * * De la Fuente was the operator of the station "by grace" of the

> Defendant Company which could and did remove him as it pleased; that all the equipments needed to operate the station was. owned by the Defendant Company which took charge of their proper care and maintenance, despite the fact that they were loaned to him; that the Defendant company did not leave the fixing of price for gasoline to De la Fuente; on the other hand, the Defendant company had complete control thereof; and that Tiongsqn, the sales representative of the Defendant Company, had supervision over De la Fuente in the operation of the station, and in the sale of Defendant Company's products therein. * * *.

Taking into consideration the fact that the operator owed his position to the company and the latter could remove him or terminate his services at will; that the service station belonged to the company and bore its tradename and the operator sold only the products of the company; that the equipment used by the operator belonged to the company and were just loaned to the operator and the company took charge of their repair and maintenance; that an employee of the Company supervised the operator and conducted periodic inspection of the company's gasoline and service station; that the price of the products sold by the operator was fixed by the company and not by the operator; and that the receipts signed by the operator indicated that He was a mere agent, the finding of the Court of Appeals that the operator was an agent of the 764 PHILIPPINE REPORTS Shell Co, of the Phils., Ltd. vs. Firemen's Ins. Co. of Newark, N. J., et al, company and not an independent contractor should not be disturbed.

To determine the nature of a contract courts do not have or are not bound to rely upon the name or title given it by the contracting parties, should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations stipulated or agreed upon may be shown and inquired into, and should such performance conflict with the name or title given the contract by the parties, the former must" prevail over the latter.

It was admitted by the operator of the gasoline and service station that "the car was carefully and centrally placed on the platform of the lifter * * *" and the Court of Appeals found that-

> * * * the fall of Appellant Sison's car from the hydraulic lift and the damage caused therefor, were the result of the jerking and swaying- of the lift when the valve was released, and that the jerking was due to some accident and

> unforeseen shortcoming of the mechanism itself, which caused its faulty or defective operation or functioning, and that –
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> * * *the servicing 'job on Appellant Sison's automobile was accepted by De la Fuente in the normal and ordinary conduct of his business as operator of his co-appellee's service station, and that the jerking and swaying of the hydraulic lift which caused the fall of the subject car were due to its defective condition, resulting in its faulty operation. * * *.

As the act of the agent or his employees acting within the scope of his authority is the act of the principal, the breach of the undertaking by the agent is one for which the principal is answerable. Moreover, the company undertook to "answer and see to it that the equipments are in good running order and usable condition;" and the Court of Appeals found that the Company's mechanic failed to make a thorough check up of the hydraulic lifter and the check up made by its mechanic was "merely VOL. 100, JANUARY 29, 1957, 765 People vs. Arpon, et al. routine" by raising "the lifter once or twice and after observing that the operation was satisfactory, he (the mechanic) left the place." The latter was negligent and the company must answer for the negligent act of its mechanic which was the caiise of the fall of the car from the hydraulic lifter.

The judgment under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia and *Felix, JJ.*, concur.

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