

[G. R. No. L-7763. December 02, 1957]

**HONORIA DELGADO VDA. DE GREGORIO, ET AL., PLAINTIFFS AND APPELLANTS,
VS. GO CHONG BING, DEFENDANT AND APPELLEE.**

D E C I S I O N

LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Davao absolving defendant from liability for the accidental death of Quirino Gregorio. It came to this Court as the amount demanded in the complaint is more than P50,000.

On or before June 2, 1952, defendant was the owner of a truck. He had a driver and a *cargador* or driver's helper by the name of Francisco Romera. In the afternoon of June 2, 1952, defendant ordered Romera to drive his truck, with instructions to follow another truck driven by his driver and help the latter in crossing Sumlog river which was then flooded, should it be unable to cross the river because of the flood. Romera at that time was not a licensed driver. He only had a student's permit, issued to him on March 31, 1952 (Exhibit "1"). The truck started from the town of Lupon at about 5:30 o'clock in the afternoon, driven by Romera. Some persons boarded the truck and among them was one policeman by the name of Venancio Orfanel. While the truck was on the way, it made a stop and then Orfanel took the wheel from Romera, while the latter stayed on the driver's left, reclined on a spare tire inside of the truck. As to the circumstances under which Orfanel was able to take hold of and drive the truck, there is some dispute and this matter will be taken up later in the decision.

While the truck was being driven by Orfanel, with another truck ahead of it driven by defendant's driver, it so happened that they came to a truck that was trying to park on the left side of the road. Romera suggested to Orfanel that he shift to low gear and Orfanel did so. But as they approached the parking truck, and in order to avoid colliding with it, Orfanel swerved the truck towards the right. It so happened that at that time two

pedestrians were on the right side of the road. As the truck had swerved to the right and was proceeding to hit the said pedestrians, Romera told Orfanel to apply the brake, but Orfanel instead of doing so put his foot on the gasoline and the truck did not stop but went on and hit and ran over one of the pedestrians, by the name of Quirino Gregorio. The plaintiffs-appellants in this action are Gregorio's widow and his children and heirs. Because of the accident, Orfanel was prosecuted for homicide with reckless imprudence. He pleaded guilty to the charge and was sentenced accordingly.

As hinted above, an important issue in the case has relation to the circumstances under which Orfanel was able to take hold of the wheel and drive the truck. To sustain the theory that defendant's *cargador* Francisco Romera was negligent, plaintiffs introduced one Javier A. Dayo as a witness. According to this witness the truck was speeding at the rate of 20 miles an hour. According to him also, while the truck was about to pass by their house of one Lucio, running at a speed of 20 miles per hour, he heard Romera shouting "hand brake! hand brake!"; that both Orfanel and Romera tried to turn the driver's wheel to the left and direct the truck towards the left to avoid the collision. According to this witness also, Romera gave the wheel to Orfanel voluntarily upon the request of the latter.

Plaintiffs also sought to prove that Romera gave the truck voluntarily to the policeman by presenting the affidavit of Romera made on June 5, 1952 (Exhibit "1"). This affidavit, however, is inadmissible as evidence against the Vda. de Gregorio, et al. vs. Go Chong defendant because it is hearsay with respect to him. It may not be considered as part of the *res gestae* either, because the affidavit was taken one day after the incident.

Against the above evidence, the defendant testified that he gave positive instructions to Romera not to allow anybody to drive the truck, and Romera himself testified that he had warned Orfanel that his master prohibited him from allowing anybody to drive the truck, but that as Orfanel was a uniformed policeman and insisted that he drive the truck, and that as he believed that the policeman knew how to drive, he let him drive the truck.

We are of the belief that defendant's claim that Romera gave the wheel to the policeman for fear of, or out of respect for, the latter, has been proved by a preponderance of the evidence. The testimony of witness Dayo is not corroborated by any other testimony. As he testified that he was two meters behind Romera, he could not have noticed with exactness the circumstances under which the policeman was able to get hold of the wheel and drive the truck and his testimony in that respect cannot be believed. We are, therefore, forced to the conclusion that the defendant's *cargador*, or Francisco Romera, gave the

wheel to Orfanel out of respect for the latter, who was a uniformed policeman and because he believed that the latter had both the ability and the authority to drive the truck, especially as he himself had only a student's permit and not a driver's license.

The court *a quo* dismissed the action on the ground that as the death or accident was caused by an act or omission, of a person who is not in any way related to the defendant, and as such act or omission was punishable by law, and as a matter of fact he had already been punished therefor, no civil liability should be imposed upon the defendant. Against this decision the plaintiffs have appealed to this Court, contending that when defendant permitted his cargador, who was not provided with a driver's license, to drive the truck, he thereby violated the provisions of the Revised Motor Vehicle Law (section 28, Act No. 3992), and that this constitutes negligence *per se*. (People vs. Santos, et al., CA-G. R. No. 1088- 1089R.) But admitting for the sake of argument that the defendant had so violated the law, or may be deemed negligent in entrusting the truck to one who is not provided with a driver's license, it is clear that he may not be declared liable for the accident because his negligence was not the direct and proximate cause thereof. The leading case in this jurisdiction on negligence is that of Taylor vs. Manila Electric Railroad and Light Company, 16 Phil. 8. Negligence as a source of obligation both under the civil law and in American cases was carefully considered and it was held:

“We agree with counsel for appellant that under the Civil Code, MS under the generally accepted doctrine in the United States, the plaintiff in an action such as that under consideration, in order to establish his right to a recovery, must establish by competent evidence:

“(1) Damages to the plaintiff.

“(2) Negligence by act or omission of which defendant personally, or some person for whose acts it must respond, was guilty.

“(3) The connection of cause and effect between the negligence and the damage.” (Taylor vs. Manila Electric Railroad and Light Co., *supra*, p. 15.)

In accordance with the decision of the Supreme Court of Spain, in order that a person may be held guilty for damage through negligence, it is necessary that there be an act or

omission on the part of the person who is to be charged with the liability and that damage is produced by the said act or omission.

“In accordance with the fundamental principle of proof, that the burden thereof is upon the plaintiff, it is apparent that it is the duty of him who shall claim damages to establish their existence. The decisions of April 8, 1896, and March 18, July 6, and September 27, 1898, have especially supported the principle, the first setting forth in detail the necessary points of the proof. which are two: An Act or omission on the part of the person who is to be charged with the liability, and the production of the damage by said act or omission.

“This includes, by inference, the establishment of a relation of cause or effect between the act or the omission and the damage; the latter must be the direct result of one of the first two. As the decision of March 22, 1881, said, it is necessary that the damages result immediately and directly from an act performed culpably and wrongfully; ‘necessarily presupposing a legal ground for Imjuitability.’ ” (Taylor vs. Manila Electric Railroad and Light Co., *supra*, p. 28.)

It is evident that the proximatej immediate and direct cause of the death of the plaintiffs’ intestate was the negligence of Orfanel, a uniformed policeman, who took the wheel of the truck from defendant’s cargador, in spite of the protest of the latter. The reason for absolving the defendant therefor is not because the one responsible for the accident had already received indemnification for the accident, but because there is no direct and proximate causal connection between the negligence or violation of the law by the defendant to the death of the plaintiffs* intestate.

For the foregoing considerations, the judgment appealed from is hereby affirmed, “without costs.

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

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