

**GREGORIO ANURAN, MARIA MALIGAYA, LAPAZ LARO, ET AL.,
PETITIONERS, VS. PEPITO BUÑO, PEDRO GAHOL, LUISA ALCANTARA,
GUILLERMO RAZON, ANSELMO MALIGAYA AND CEFERINA ARO,
RESPONDENTS.**

G.R. Nos. L-21353-54. May 20, 1966

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

At noon of January 12, 1958, a passenger jeepney was parked on the road to Taal, Batangas. A motor truck speeding along, negligently bumped it from behind, with such violence that three of its passengers died, even as two others (passengers too) suffered injuries that required their confinement at the Provincial Hospital for many days.

So, in February 1958 these suits were instituted by the representatives of the dead and of the injured, to recover consequential damages against the driver and the owners of the truck and also against the driver and the owners of the jeepney.

The Batangas court of first instance, after trial, rendered judgment absolving the driver of the jeepney and its owners, but it required the truck driver and the owners thereof to make compensation.

The plaintiffs appealed to the Court of Appeals insisting that the driver and the owners of the jeepney should also be made liable for damages.

The last mentioned court, upon reviewing the record, declared that:

"It is admitted that at about noon-time on January 13, 1958, the passenger jeepney owned by defendants spouses Pedro Gahol and Luisa Alcantara, bearing plate No. TPU-13548, then being driven by their regular driver, defendant Pepito Buno, was on its regular route travelling from Mahabang Ludlod, Taal, Batangas, towards the poblacion of the said municipality. When said passenger jeepney crossed the bridge separating Barrios Mahabang Ludlod and Balisong, Taal, Batangas, it had fourteen passengers, excluding the driver, according to the testimony of defendant Buño (pp. 12 & 18, t.s.n. July 17, 1958), or sixteen passengers according to the testimony of plaintiff Edita de Sagun, (pp. 9, 12 & 13, t.s.n. June 26, 1958). However, the facts remains that the vehicle was overloaded with passengers at the time, because according to the partial stipulation of facts "the maximum capacity of the jeepney bearing- plate No. TPU-13548 of said defendants was eleven (11) passengers including the driver." (Printed Roc. on Appeal, pp. 35, 37.)

After crossing the bridge, defendant Buño stopped his vehicle in order to allow one of his passengers to alight. He then so parked his jeepney in such a way that one-half of its width (the left wheels) was on the asphalted pavement of the road and the other half, on the right shoulder of said road (pp. 21-22, t.s.n. May 26, 1958; p. 12 t.s.n. July 17, 1958). Approximately five minutes later and before Buno could start his vehicle, a speeding water truck, which bore plate No. T-17526 and owned by defendants-spouses Anselmo Maligaya and Ceferina Aio, then being driven by Guillermo Itazon from the direction of Mahabang Ludlod, Taal, Batangas, towards

the poblacion of that municipality, violently smashed against the parked jeepney from behind, causing it to turn turtle into a nearby ditch."

Then said Appellate Court went on to affirm the exoneration of the jeepney driver and of its owners. It explained that although "the driver of the ill-starred vehicle was not free from fault, for he was guilty of an antecedent negligence in parking his vehicle with a portion thereof occupying the asphalted road", it considered the truck driver guilty of greater negligence which was the efficient cause of the collision; and applying the doctrine of the "last clear chance"/aid court ordered the owners of the truck to pay, solidarity with its driver, damages as follows:

"* * * the sum of P6,000.00 for the death of their daughter Emelita, another sum of P5,000.00 as moral damages and the sum of P500.00 as actual damages, and to plaintiffs Simplicio, Alberto, Avclina and Alfredo, all surnamed Arriola, and represented by their guardian ad litem Agiistin Arriola, the sum of P6,000.00 for the death of their natural mother, Leonor Masongsong, another sum of P5,000.00 as moral damages, the sum of P3,600.00 for loss of earning capacity of said deceased and the sum of P850.00 as actual damages."

The plaintiffs brought the matter to this Supreme Court insisting that the driver and the owners of the jeepney should also be made liable.

We gave due course to the petition for review, because we thought the decision meant exoneration of the carrier from liability to its passengers, notwithstanding the negligence of its driver.

Upon further and more extended consideration of the matter, we have become convinced that error of law. was committed in releasing the jeepney from liability. It must be remembered that the obligation of the carrier to transport its passengers safely is such that the New Civil Code requires "utmost diligence" from the carriers (Act. 1755) who are "presumed to have been at fault or to have acted negligently, unless they prove that they have observed extraordinary diligence" (Art. 1756). In this instance, this legal presumption of negligence is confirmed by the Court of Appeals' finding that the driver of the jeepney in question was at fault in parking the vehicle improperly. It must follow that the driver—and the owners—of the jeepney must answer for injuries to its passengers.

The principle about the "last clear chance" would call for application in a suit between the owners and drivers of the two colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligation. For it would be inequitable to exempt the negligent driver of the jeepney and its owners on the ground that the other driver was likewise guilty of negligence.

Now. as to damages. The driver and the owners of the truck have not appealed from the Court of Appeals' assessment. The plaintiffs (petitioners) have not asked here for a greater amount of indemnity. They merely pray for a declaration that Pepito Buno, Pedro Gahol and Luisa Alcantara (the driver and the owners of the jeepney, respectively) be declared jointly and severally liable with the other defendants.

Wherefore, affirming the decision under review, we hereby modify it in the sense prayed for by plaintiffs-petitioners. The three defendants last mentioned are required to pay solidarily with the other defendants-respondents the amounts fixed by the appealed decision. Costs of both appeals against said three defendants. So ordered.

Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal and Bengzon, J.P., JJ., concur.

Decision affirmed with modification.

[1] Picart vs. Smith, 37 Phil. 809.

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