

SAMUEL DURLAO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FLORANTE, PACIFICO, LEO, ANGELES, CHRISTOPHER, JEAN, LAURA, HANNIBAL, AND ROMULUS, MINORS AND ALL SURNAMED CERVANT...*G.R. No. L-39172. May 31, 1982*

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/075eb9009036/>**DE CASTRO, J.:**

Petitioner was one of the defendants in this suit for damages filed by private respondent in the Court of First Instance of Davao resulting from a vehicular accident. The other defendants, Hermanos de Yap and the City of Davao, did not appeal from the decision of the Court of Appeals which affirmed the decision of the Court of First Instance of Davao holding all defendants, including petitioner herein, liable jointly and severally in the total sum of P61,395.00, by way of damages in favor of private respondents.

The relevant facts as found by the respondent court are recited in its decision as follows:

"On February 28, 1964, about 11:30 in the night, Isauro Elizalde, accompanied by his wife Hanidena Elizalde, while driving his jeep southwards from Davao City, thru Talomo Bridge, suddenly and unexpectedly came upon a hole on the south end of said bridge right on his way, about 1 meter in diameter and 8 ft. deep, surrounded by boulders, thus blocking his lane. To avoid it he swerved his jeep abruptly to the left side of the road where he was confronted by a steep embankment. He swerved his jeep back to the right to get into his lane after passing the boulders and the destroyed portion of the road (sketch Exh. "A") but he collided with the truck of defendant Hermanos de Yap driven by Dulcesimo Dacoy who came from the opposite direction. As a result of the collision, Isauro Elizalde died on the spot in his jeep while his wife who was found on the road, severely injured but was still alive, died soon after in the hospital.

"The left end of the truck's fender was bent while the portion of its left hood just below the front headlight and its edge just above the left front wheel were slightly dented. The jeep which was enveloped in flames from the incident was badly damaged. The road where the two vehicles collided is a straight one and judging from the sketch made by the police investigator (Exh. "A") both drivers could have noticed each other even when they were yet far from each other. The same sketch also shows that the jeep had already passed the boulders and the destroyed portion of the road and was way beyond such hazards when the collision took place.

"By reason of this incident, the plaintiffs as heirs of both deceased sued the Hermanos de Yap but the suit was dismissed for failure of plaintiffs to prosecute. However, same plaintiffs filed the present complaint on May 16, 1966, which, aside from the original defendant, now includes the City of Davao and City Engineer Samuel Dumlao alleging that while Hermanos de Yap was negligent not only because its driver operated their truck carelessly, recklessly, and negligently, but also because it was itself negligent in the selection and supervision of its employees, the City of Davao and City Engineer Samuel Dumlao were also negligent in not repairing the road where the accident took place and in not taking the necessary precautions to warn the public of the hazards on said road, thereby causing the collision which resulted in the destruction of the jeep and also in the death of its occupants." [1]

Petitioner seeks to be relieved from liability on grounds he has indicated in the following issues which he raised in the present petition:

"1. The allegations in the complaint being to the effect that petitioner Samuel Dumlao was sued in his official capacity for being the City Engineer, may respondent court correctly hold that he was sued in his personal capacity?;

"2. No evidence having been adduced or found that petitioner acted in bad faith or was guilty of gross negligence in connection with his official duties, may respondent court hold him personally liable in this action?; and

"3. Republic Act 4354 having no provision for retroactivity, may the said law be applied to deprive petitioner of his property by giving said statute retroactive effect?"[2]

His assignment of errors are as follows:

"1. Respondent court erred in holding that private respondents, as set forth in their complaint, sued petitioner in his personal capacity because the allegations therein clearly state that he was sued in his official capacity as City Engineer;

"2. The law is clear that in the absence of bad faith or gross negligence, a public official may not be held personally liable for any act or omission in connection with the discharge of his duties, therefore, respondent court gravely erred on this point;

"3. Respondent court erred in applying Republic Act 4354 retroactively against the petitioner."[3]

In discussing the above assignment of errors, he first cites the provision of Article 2189 of the Civil Code as properly serving the basis of the liability of the City of Davao, which does not include that of any of city officials. This proposition is quite clear from the language of the cited provision and needs no further elaboration to show its validity. The aforesaid provision reads:

"Art. 2189. - Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by any person by reason of the defective condition of the roads, streets, bridges, public buildings and other public works under their control or supervision."

Nevertheless, it is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith,[4] or beyond the scope of his authority or jurisdiction.[5] The question, therefore, is whether petitioner did act in any of the manner aforesaid.

Petitioner contends that, contrary to the holding of the respondent Court of Appeals, he was not sued in his personal capacity, but in his official capacity. Neither was malice or bad faith alleged against him in the complaint, much less proven by the evidence, as the respondent court made no such finding of malice or bad faith.

Examining the allegations of the complaint and reviewing the evidence it would indeed be correct to say that petitioner was sued in his official capacity, and that the most that was imputed to him is act of culpable neglect, inefficiency and gross indifference in the performance of his official duties. Verily, this is not imputation of bad faith or malice, and what is more was not convincingly proven.

We are, therefore, constrained to hold that from the complaint itself, no sufficient cause of action was alleged, and the evidence utterly fails to provide a basis for imposing on petitioner the liability as has been declared against him jointly with his co-defendants, the City of Davao and Hermanos de Yap, by the trial court. The latter defendants must have already satisfied the judgment against them, for they no longer took appeal from the

decision of the respondent Court of Appeals, and the private respondents did not bother to file their brief in this instant proceedings, for they did not even ask for extension of time to do so if they had any desire to file the appellees' brief.

There remains the only question of whether Section 5 of R. A. No. 4354 under which the respondent Court of Appeals found petitioner properly included as a defendant whom it considered sued in his private capacity, was properly applied by said Court. In its own words, the Court of Appeals (Second Division) said that "the Revised Charter of the City of Davao (Act 4354) which took effect on June 19, 1965, cannot retroact to effect (sic) a case that occurred on February 28, 1964." But surprisingly, the same Court went on to say: "Moreover, in the case of defendant City Engineer Samuel Dumlao, his inclusion in the complaint, as shown in paragraph 3 thereof is in his private capacity and conforms with the provision of Section 5 of Act 4354." This very patent inconsistency may well be said to reflect how infirm is the appealed decision of the Court of Appeals insofar as petitioner, who incidentally has long retired, is concerned.

WHEREFORE, the petition is hereby granted, and the decision appealed from is reversed insofar as petitioner Samuel Dumlao is concerned, who is accordingly declared without liability for damages as sought in the complaint in Civil Case No. 5042 of the Court of First Instance of Davao (Annex D to Petition). No costs.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur. Aquino, J., in the result. Concepcion, Jr., J., no part.

[1] p. 59, Rollo; Annex "1" to Petition, pp. 1-2.

[2] pp. 7-8, Petitioner's Brief; p. 127, Rollo.

[3] p. 8, Petitioner's Brief; Id.

[4] *Mindanao Realty Corp. vs. Kintanar*, 6 SCRA 814.

[5] *The Philippine Racing Club vs. Bonifacio*, G.R. No. L-11844, August 31, 1960.

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