

ASELA P. TACTAQUIN, PLAINTIFF AND APPELLANT, VS. JOSE B. PALILEO, DEFENDANT AND APPELLEE.

G.R. No. L-20865. September 29, 1967

Ponente: DIZON, J.

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DIZON, J.:

On September 7, 1962 appellant filed the present action against appellee in the Court of First Instance of Rizal to recover damages in the total sum of P37,686.35 for the death of her daughter, Norma Tactaquin, and serious physical injuries inflicted on her on June 16, 1961 when a car recklessly driven by appellee hit them at Marulas, Valenzuela, Bulacan.

After being served with summons appellee filed a motion to dismiss the complaint on the ground that the demands set forth therein were barred by the final judgment rendered in Criminal Case No. 4736 of the Court of First Instance of Bulacan finding him guilty of the offense of homicide, with serious physical injuries, thru reckless imprudence, arising from the same accident alleged in the complaint, and awarding appellant damages in the sum of P4,000.00, aside from imposing upon him (appellee) the corresponding penalty of imprisonment.

Sustaining said motion, the lower court dismissed the case. Hence the present appeal.

Grounds for reversal relied upon by appellant are that the trial court erred (a) in holding that the claims set forth in her complaint are already barred by a prior judgment, and (b) in holding that appellant had not re-served her right to file a separate civil action for damages when Criminal Case No. 4736 of the Court of First Instance of Bulacan was instituted.

In connection with the first question - which is obviously decisive of this appeal - it is admitted that because of the accident that took place on June 19, 1961 in Valenzuela, Bulacan, appellant suffered bodily injuries and her daughter Norma died; that, as a result, appellee was prosecuted in Criminal Case No. 4736 of the Court of First Instance of Bulacan where he was found guilty of the offenses charged and was sentenced to the corresponding penalty of imprisonment and to pay damages to the offended party in the sum of P4,000.00.

It is also a fact that the accident just referred to is the same accident alleged as cause of action in appellant's complaint dismissed by the trial court. There can therefore, be no doubt at all that the claim for damages alleged in said complaint is already barred.

But appellant contends that the cause of action set forth in her complaint is not predicated upon the same criminal act charged against appellee in the criminal case where he had been convicted, and that appellee's negligence which caused damages to her and death to her daughter is a tortious act which "in itself can be the basis of recovery for damages independently of criminal action". In other words, appellant distinguishes the civil liability of appellee under the Civil Code from his liability arising from the crime committed under the facts set forth above, invoking in support of her stand the provisions of Article 2177 of the New Civil Code to the effect that responsibility for fault or negligence under the preceding articles (quasi-delict) is entirely separate and distinct

from the civil liability arising from negligence under the penal code.

Appellants contention is without merit, because according to the very legal provision she relies upon, "the plaintiff can not recover damages twice for the same act or omission of the defendant" (Underlines supplied). In the case at bar, it is crystal clear that any civil liability contracted by appellee - whether based on quasi-delict or otherwise - arouse from exactly the same act or omission, namely, his reckless manner of driving which resulted in serious physical injuries to appellant, in the death of ho daughter. For this same act or omis-sion appellant can not recover twice.

On the question of whether or not appellant made of record in the criminal case already referred to her right to institute a separate civil action for damages, the record tends to show that the reservation was made after appellee had already pleaded guilty and after the private prosecutor had entered his appearance jointly with the prosecuting attorney in the course of the criminal pro-ceedings. Consequently, such reservation must be deemed, as in fact the lower court deemed it, legally ineffective.

WHEREFORE, the appealed judgment being in accordance with law, the same is hereby armed, with costs.

Concepcion, C.J., Reyes, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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