

M. D. TRANSIT & TAXI CO., INC., PETITIONER, VS. COURT OF APPEALS AND DAVID EPSTEIN, RESPONDENTS.*G.R. No. L-23882. February 17, 1968*

Ponente: CONCEPCION, C.J.

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Appeal by certiorari from a decision of the Court of Appeals.

While crossing Taft Avenue extension, near its intersection with Castro Street, Manila, passing by the pedestrian lane, on August 18, 1958, about 8:30 a.m., and as he was about to reach the middle of the road, David Epstein hereinafter referred to as plaintiff was hit by a Pasay-bound bus of the MD Transit & Taxi Co., Inc. - hereinafter referred to as appellant - driven by Dominador Sembrano, in consequence of which plaintiff's left femur and right fibula were fractured, apart from sustaining lacerations in scalp, occipital region. Prosecuted for serious physical injuries through reckless imprudence, the Court of First Instance of Manila found Sembrano guilty thereof beyond reasonable doubt and sentenced him to suffer the corresponding penalty of imprisonment,[1] but, re-frained from making any pronouncement on his civil liability, plaintiff having reserved the right to file a separate civil action for damages. Although, from the decision of said court, Sembrano appealed to the Court of Appeals, he, later, withdrew the appeal. As a consequence, said decision became final and executory on May 5, 1961.

Meanwhile, or on January 23, 1959, plaintiff had commenced the present action for damages against Sembrano and appellant herein. Sembrano was declared in default, whereas appellant filed its answer alleging that it had exercised due diligence in the selection of its employees and in supervising them in the performance of their duties, and that the accident was due to plaintiff's recklessness or negligence. After appropriate proceedings, the Court of First Instance of Manila rendered a decision, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered finding defendant, Dominador Sembrano, primarily liable to plaintiff, David Epstein, for the damages sustained by the latter, and hereby orders the former to pay the latter the following:

"(1) Actual damages in the amount of P3,161.10;

"(2) Compensatory damages in the amount of P12,000.00;

"(3) Moral damages in the amount of P5,000.00; and

"(4) Counsel fees in the amount of P1,000.00; and

"Finding defendant MD Transit and Taxi Co., Inc., subsidiary liable to plaintiffs David Epstein, in the amounts above-indicated, in the event that defendant, Dominador Sembrano, fails to pay the same or is insolvent. Costs against defendants. "

On appeal, said decision was affirmed by the Court of Appeals. Hence, this petition for review by certiorari, filed

by ap-pellant.

The main issue raised by the latter refers the nature of the present action, namely, whether the liability sought to be en-forced therein arises from a crime, as contended by the plaintiff, or from a quasi-delict, as urged by appellant. The importance of this issue is due to the fact that appellant's alleged diligence in the selection of its employees and in exercising supervision over them would be a good defense should the action be based upon a quasi-delict, but not if predicated upon a liability springing from a crime. The trial court and the appellate court rejected appel-lant's pretense and sustained that of the plaintiff, and, we think, correctly.

Indeed, in his complaint, plaintiff premised his action against herein appellant upon the allegation that the latter is "subsidiarily liable for all damages caused by negligence of its employee in the performance of his duties," and, accordingly, prayed that Sembrano be ordered and, "upon his inability," appellant herein, to pay the damages claimed in said pleading. In other words, plaintiff maintained that Sembrano is primarily liable for said damages, and that appellant's liability therefor is purely, secondary, which is typical of the civil liability arising from crimes, pursuant to articles 102 and 103 of the Revised Penal Code. The effect of said allegation and subsequent prayer upon the nature of the present action is illustrated by the case of *De Leon, Brokerage v. Court of Appeals*² in which the allegations the complaint were not clear on whether or not the damages sued for resulted from a crime or from a quasi-delict. The issue was resolved in favor of the latter alternative, in view of the prayer in said pleading to the effect that the employer be held "solidarily liable with his employee. In fact, solidarity is one of the main characteristics of obligations arising from quasi-delicts.³

Another circumstance militating in favor of plaintiff' s contention is the fact that, in the criminal action, he had reserved right to seek indemnity in a separate civil action. There can be doubt that the present action was filed in pursuance of said reser-vation, which would have been unnecessary had plaintiff not based his right of action upon Sembrano's criminal liability. Further corroboration is supplied by the fact that the first piece of evidence offered by plaintiff herein, at trial of this case in the court of origin, was the decision of conviction rendered in the criminal case against Sembrano.

Contrary to appellant's pretense, the absence of allegations, in plaintiff's complaint, about Sembrano's conviction in the criminal case, and about his insolvency, does not impair the theory of the plaintiff, for such allegations are not indispensable in an action for damages sustained on account of a crime committed by the employee. Indeed, the law authorizing the commencement of a civil action based upon a liability arising from a crime, even before the institution of the criminal action,⁴ necessarily implies that the rendition of a judg-ment of conviction in the latter need not be alleged in the civil complaint.

Neither is an allegation of insolvency of the employee essen-tial to an action to enforce the subsidiary liability of the employer, particularly when both are sued in the same action — as in the case at bar — to exact the primary liability of the employee, and the sub-sidiary liability of the employer. To be sure, the secondary nature of the latter's obligation necessarily connotes that his properties may not be levied upon, in pursuance of a writ, of execution of the judgment declaring the existence of both liabilities, as long and so long as the employer can point out properties of the employee which may be levied upon in satisfaction of said judgment.⁵ Thus, the employee's solvency is merely a matter of defense which may be availed of by the employer.

It is next urged that the lower courts erred in considering in this case the judgment of conviction in the criminal case, in which appellant was not a party, and in disregarding appellant' s evi-dence on the alleged diligence exercised in selecting its employees and in supervising them in the discharged of their duties. Though relevant in an action based upon a quasi-delict, said diligence is, however, immaterial in the case at bar, the same being predicate upon a liability arising from a crime. Moreover, it is already settled that the judgment of conviction in

the criminal case against employee, is, not only admissible in evidence in the civil case against the employer, but, also, conclusive upon his subsidiary liability arising from the employee's criminal liability. Thus in *Miranda v. Malate Garage & Taxicab, Inc.*,⁶ we held:

"It is true that an employer, strictly speaking is not a party to the criminal case instituted against his employee but in substance and in effect he is, considering the subsidiary liability imposed upon him by law. It is his concern, as well as of his employee, to see to it that his interest be protected in the criminal case by taking virtual participation in the defense of his employee. He cannot leave him to his own fate because his failure is also his. And if because of his indifference or inaction the employee is convicted and damages are awarded against him, he cannot later be heard to complain if brought to court for the enforcement of his subsidiary liability that he was not given his day in court." (Underscoring supplied.)

The language used in *Martinez v. Barredo*⁷ was:

"The important question is whether a judgment of conviction sentencing the defendant to pay an indemnity is conclusive in an action against his employer for the enforcement of the latter's subsidiary liability under Articles 102 and 103 of the Revised Penal Code. The appealed decision makes reference to two earlier decisions of this Court, namely, *City of Manila vs. Manila Electric Co.*, 52 Phil., 586, holding that such judgment of conviction is not admissible, and *Arambulo vs. Manila Electric Co.*, 55 Phil., 75, in effect holding that it is merely prima facie evidence, and to the prevailing view in the United States to the effect that the person subsidiarily liable is bound by the judgment if the former had notice of the criminal case and could have defended it had he seen fit to do so, and that otherwise such judgment is only prima facie evidence.

"After very careful reflection, we have arrived at the opinion that the judgment of conviction, in the absence of any collusion between the defendant and the offended party, should bind the person subsidiarily liable. The stigma of a criminal conviction surpasses in effect and implications mere civil liability. Common sense dictates that a finding of guilt in a criminal case in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only preponderance of evidence to support a judgment, unless those who support the contrary rule should also hold that an absolution in a civil case will operate to automatically set aside the verdict against the defendant in the criminal case. It is anomalous, to say the least, to suppose that the driver, excelling 'Dr. Jekyll and Mr. Hyde', could be guilty of reckless negligence in so far as his obligation to pay indemnity is concerned, and at the same time could be free from blame when said indemnity is sought to be collected from his employer, although the right to the indemnity arose from and was based on one and the same act of the driver.

"The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a subsidiary "civil liability incident to and dependent upon his driver's criminal negligence which is a proper issue to be tried and decided only in a criminal action. In other words, the employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence. x x x." (Underscoring supplied.)

These views were reiterated in *Nagrampa v. Mulvaney*⁸ and *Orsal v. Alisbo*.⁹

Although conceding that the sum of P3,161 awarded as actual damages "is not too excessive," appellant maintains that it is "unreasonable and ought to be reduced." Actual damages is, however, a question of fact, and the findings thereon of the Court of Appeals, adopting those of the trial court, are conclusive upon us.

Appellant likewise impugns the awards to plaintiff of P5,000 as moral damages, P12,000 as compensatory damages and P1,000 as attorney's fees. In connection therewith, the Court of Appeals, after quoting the findings of the court of origin on the facts and circumstances justifying said awards, had the following to say:

"Bearing in mind that in crimes, the defend-ant is liable for all damages which are the natural and probable consequences of the act or omission complained of, including loss or impairment of earn-ing capacity of the offended party and injury to his business standing or commercial credit as well as compensation for physical pain and suffering and mental anguish, which was a gap in our legal system, filled in by the new Civil Code, and that attorney's fees are recoverable in a separate action to recover civil liability arising from crime, and considering that appellant has not adduced compelling reasons to justify us in disturbing the abovementioned find-ings of the lower court, by substituting ours for its sound discretion, exercised in the light of the facts and circumstances obtaining in this case as observed by it, the said last three assigned errors of appellant are likewise declared without sufficient merit."

Upon a review of the record, we do not feel justified in dis-turbing the conclusions reached by the appellate court and the court of origin.

It may not be amiss to note that "actual" damages and "consequential damages" are dealt with in the Civil Code of the Philippines under the same Chapter thereof;¹⁰ that the two (2) terms are thus used therein as equivalent to one another; and that the decision appealed had characterized as "actual damages the expenses incurred by the plaintiff for his medical treatment and as "compensatory damages" the earnings he failed to make due to his consequent "inability to pursue his normal work or occupation." Considering, however, that in the language of Article 2200 of said Code, which is part of the aforementioned Chapter 2 — "indemnification for damages shall comprehend not only the value of the loss suffered" — otherwise known as "damnum emergens," and alluded to in said decision as "actual damages" "but also that of the profits which the obligee failed to obtain" — or "lucrum cessans" or "compensatory damages, " pursuant to the same decision — the distinction therein made appears to be inconsequential, insofar as the law and this case is concerned.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against appellant, MD Transit & Taxi Co., Inc.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] From 1 year, 8 months and 1 day to 2 years and 4 months.

2 L-15247, February 28, 1962.

3 See Articles 2180 and 2194, Civil Code of the Philippines.

4 Alba v. Acuña, 53 Phil., 381.

5 Quiambao v. Mora, L-12690, May 25, 1960; Rotea v. Halili, L-12030, September 30, 1960.

6 99 Phil., 670, 675.

7 81 Phil., 1, 2-3.

8 97 Phil., 724.

9 L-13310, November 28, 1959.

10 Chapter 2 of Title XVIII, on Damages.

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