

**BIENVENIDO GELISAN, PETITIONER, VS. BENITO ALDAY,
RESPONDENT.***G.R. No. L-30212. September 30, 1987*

Ponente: PADILLA, J.

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Review on certiorari of the judgment* rendered by the Court of Appeals, dated 11 October 1968, as amended by its resolution, dated 11 February 1969, in CA-G.R. No. 32670-R, entitled: "Benito Alday plaintiff-appellant, vs. Roberto Espiritu and Bienvenido Gelisan, defendants-appellees", which ordered the herein petitioner Bienvenido Gelisan to pay, jointly and severally, with Roberto Espiritu, the respondent Benito Alday the amount of P5,397.30, with legal interest thereon from the filing of the complaint, and the costs of suit; and for the said Roberto Espiritu to pay or refund the petitioner Bienvenido Gelisan whatever amount the latter may have paid to the respondent Benito Alday by virtue of the judgment.

The uncontroverted facts of the case are, as follows:

"Defendant Bienvenido Gelisan is the owner of a freight truck bearing plate No. TH-2377. On January 31, 1962, defendant Bienvenido Gelisan and Roberto Espiritu entered into a contract marked Exhibit 3-Gelisan under which Espiritu hired the same freight truck of Gelisan for the purpose of hauling rice, sugar, flour and fertilizer at an agreed price of P18.00 per trip within the limits of the City of Manila provided the loads shall not exceed 200 sacks. It in also agreed that Espiritu shall bear and pay all losses and damages attending the carriage of the goods to be hauled by him. The truck was taken by a driver of Roberto Espiritu on February 1, 1962. Plaintiff Benito Alday, a trucking operator, and who owns about 15 freight trucks, had known the defendant Roberto Espiritu since 1948 as a truck operator. Plaintiff had a contract to haul the fertilizers of the Atlas Fertilizer Corporation from Pier 4, North Harbor, to its Warehouse in Mandaluyong. Alday met Espiritu at the gate of Pier 4 and the latter offered the use of his truck with the driver and helper at 9 centavos per bag of fertilizer. The offer was accepted by plaintiff Alday and he instructed his checker Celso Henson to let Roberto Espiritu haul the fertilizer. Espiritu made two hauls of 200 bags of fertilizer per trip. The fertilizer was delivered to the driver and helper of Espiritu with the necessary way bill receipts, Exhibits A and B. Espiritu, however, did not deliver the fertilizer to the Atlas Fertilizer bodega at Mandaluyong. The signatures appearing in the way bill receipt Exhibits A and B of the Alday Transportation admittedly not the signature of any representative or employee of the Atlas Fertilizer Corporation. Roberto Espiritu could not be found, and plaintiff reported the loss to the Manila Police Department. Roberto Espiritu was later arrested and booked for theft. x x x

"Subsequently, plaintiff Alday saw the truck in question on Sto. Cristo St. and he notified the Manila Police Department, and it was impounded by the police. It was claimed by Bienvenido Gelisan from the Police Department after he had been notified by his employees that the truck had been impounded by the police; but as he could not produce at the time the registration papers, the police would not release the truck to Gelisan. As a result of the impounding of the truck according to Gelisan, x x x and that for the release of the truck he paid the premium of P300 to the surety company[1]".

Benito Alday was compelled to pay the value of the 400 bags of fertilizer, in the amount of P5, 397.33, to Atlas Fertilizer Corporation so that, on 12 February 1962, he (Alday) filed a complaint against Roberto Espiritu and Bienvenido Gelisan with the Court of First Instance of Manila, docketed therein as Civil Case No. 49603, for the recovery of damages suffered by him thru the criminal acts committed by the defendants.

The defendant, Roberto Espiritu failed to file an answer and was, accordingly, declared in default.

The defendant, Bienvenido Gelisan, upon the other hand, disowned responsibility. He claimed that he had no contractual relations with the plaintiff Benito Alday as regards the hauling and/or delivery of the 400 bags of fertilizer mentioned in the complaint; that the alleged misappropriation or non-delivery by defendant Roberto Espiritu of plaintiff's 400 bags of fertilizer, was entirely beyond his (Gelisan's) control and knowledge, and which fact became known to him, for the first time, on 8 February 1962 when his freight truck, with plate No. TH-2377, was impounded by the Manila Police Department, at the instance of the plaintiff; and that in his written contract of hire with Roberto Espiritu, it was expressly provided that the latter will bear and pay all losses and damages attending the carriage of goods to be hauled by said Roberto Espiritu.

After trial, the Court of First Instance of Manila ruled that Roberto Espiritu alone was liable to Benito Alday, since Bienvenido Gelisan was not privy to the contract between Espiritu and Alday. The dispositive portion of the decisions reads, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Roberto Espiritu for the sum of P6,000 with interest at the legal rate from the time of the filing of the complaint, and the costs of the suit. Plaintiff's complaint is dismissed with respect to defendant Bienvenido Gelisan, and judgment is rendered in favor of defendant Bienvenido Gelisan and against the plaintiff for the sum of P350[2]".

On appeal, however, the Court of Appeals, citing the case of *Montoya vs. Ignacio*[3], found that Bienvenido Gelisan is likewise liable for being the registered owner of the truck; and that the lease contract, executed by and between Bienvenido Gelisan and Roberto Espiritu, is not binding upon Benito Alday for not having been previously approved by the Public Service Commission. Accordingly, it sentenced Bienvenido Gelisan to pay, jointly and severally with Roberto Espiritu, Benito Alday the amount of P5,397.30, with legal interest thereon from the filing of the complaint; and to pay the costs. Roberto Espiritu, in turn, was ordered to pay or refund Bienvenido Gelisan whatever amount the latter may have paid to Benito Alday by virtue of the judgment[4].

Hence, the present recourse by Bienvenido Gelisan.

The petition is without merit. The judgment rendered by the Court of Appeals, which is sought to be reviewed, is in accord with the facts and the law on the case and we find no cogent reason to disturb the same. The Court has invariably held in several decisions that the registered owner of a public service vehicle is responsible for damages that may arise from consequences incident to its operation or that may be caused to any of the passengers therein[5]. The claim of the petitioner that he is not liable in view of the lease contract executed by and between him and Roberto Espiritu which exempts him from liability to third persons, cannot be sustained because it appears that the lease contract, adverted to, had not been approved by the Public Service Commission. It is settled in our jurisprudence that if the property covered by a franchise is transferred or leased to another without obtaining the requisite approval, the transfer is not binding upon the public and third persons[6].

We also find no merit in the petitioner's argument that the rule requiring the previous approval by the Public Service Commission of the transfer or lease of the motor vehicle, may be applied only in cases where there is no positive identification of the owner or driver, or where there are very scant means of identification, but not in those instances where the person responsible for damages has been fixed or determined beforehand, as in the case at bar. The reason for the rule we reiterate in the present case, was explained by the Court in *Montoya vs. Ignacio*[7], thus:

"There is merit in this contention. The law really requires the approval of the Public Service Commission in order that a franchise, or any privilege pertaining thereto, may be sold or leased without infringing the certificate issued to the grantee. The reason is obvious. Since a franchise is personal in nature any transfer or lease thereof should be notified to the Public Service Commission so that the latter may take proper safeguards to protect the interest of the public. In fact, the law requires that, before the approval is granted, there should be a public hearing, with notice to all interested parties, in order that the Commission may determine if there are good and reasonable grounds justifying the transfer or lease of the property covered by the franchise, or if the sale or lease is detrimental to public interest. Such being the reason and philosophy behind this requirement, it follows that if the property covered by the franchise is transferred, or leased to another without obtaining the requisite approval, the transfer is not binding against the Public Service Commission and in contemplation of law the grantee continues to be responsible under the franchise in relation to the Commission and to the Public. Since the lease of the jeepney in question was made without such approval, the only conclusion that can be drawn is that Marcelino Ignacio still continues to be its operator in contemplation of law, and as such is responsible, for the consequences incident to its operation, one of them being the collision under consideration".

Bienvenido Gelisan, the registered owner, is not however without recourse. He has a right to be indemnified by Roberto Espiritu for the amount that he may be required to pay as damages for the injury caused to Benito Alday, since the lease contract in question, although not effective against the public for not having been approved by the Public Service Commission, is valid and binding between the contracting parties[8].

We also find no merit in the petitioner's contention that his liability is only subsidiary. The Court has consistently considered the registered owner/operator of a public service vehicle to be jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries sustained in the operation of said vehicles. Thus, in the case of Vargas vs. Langcay[9], the Court said:

"We hold that the Court of Appeals erred in considering appellant-petitioner Diwata Vargas only subsidiarily liable under Article 103 of the Revised Penal Code. This Court, in previous decisions, has always considered the registered owner/operator of a passenger vehicle, jointly and severally liable with the driver, for damages incurred by passengers or third persons as a consequence of injuries (or death) sustained in the operation of said vehicles. (Montoya vs. Ignacio, 94 Phil., 182; Timbol vs. Osias, G.R. No. L-7547, April 30, 1955; Vda. de Medina vs. Cresencia, 99 Phil., 506; Necesito vs. Paras, 104 Phil., 75; Erez vs. Jepte, 102 Phil., 103; Tamayo vs. Aquino and Rayos vs. Tamayo, 105 Phil., 949; 56 Off. Gaz. [36] 5617.) In the case of Erez vs. Jepte, Supra, We held:

"* * * In synthesis, we hold that the registered owner, the defendant-appellant herein, is primarily responsible for the damage caused * * *" (Italics ours)

In the case of Tamayo vs. Aquino, supra, We said:

"* * * As Tamayo is the registered owner of the truck, his responsibility to the public or to any passenger riding in the vehicle or truck must be direct * * *" (Italics ours)

WHEREFORE, the petition is hereby DENIED. With costs against the petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Penned by Justice Angel H. Mojica with the concurrence of Justices Julio Villamor and Hermogenes Concepcion, Jr.

[1] Rollo, pp. 18-19

[2] Record on Appeal, p. 47

[3] 94 Phil. 182

[4] Rollo, pp. 17, 38

[5] Vargas vs. Langcay, 116. Phil. 478 and cases cited; Juaniza vs. Jose, G.R. No. 50127-28, March 30, 1979, 89 SCRA 306 and cases cited; MYC Agro-Industrial Corp. vs. Vda. Caldo, G.R. No. 57298, Sept. 7, 1984, 132 SCRA 10 and cases cited.

[6] Montoya vs. Ignacio, 94 Phil. 182

[7] supra

[8] Montoyaa vs. Ignacio, supra

[9] 116 Phil. 478, 481

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