

SANCHO MONTOYA, IN HIS OWN BEHALF AND AS GUARDIAN AD LITEM OF THE MINORS ISMAEL, FELICITAS, DIVINA AND NAPOLEON, ALL SURNAMED MONTOYA, PETITIONERS, VS. MARCELINO IGNACIO, RESPON...

G.R. No. L-5868. December 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In the afternoon of January 5, 1949, Tomasita Arca boarded the jeepney driven by Leonardo de Guzman at Tanza, Cavite in order to go to Cavite City. She paid the usual fare for the trip. While the jeepney was on its way to its destination, and at a point between Tanza and Cavite City, somewhere in barrio Ligton, municipality of Rosario, it collided with a bus of the Luzon Bus Line causing as a result the death of Tomasita. Tomasita was then a school teacher of Tanza Elementary School with an annual compensation of P1,320. Her death left a widower and four minor children. Because of the jeepney's failure to transport Tomasita safely to her destination and her resultant death, her widower and children instituted the present action praying that the defendants, owners of the jeepney, be ordered to pay them an indemnity in the amount of P31,000.

Defendants set up as a special defense that the collision between the jeepney and the bus was investigated by the Office of the Provincial Fiscal of Cavite and the result of the investigation was that the one at fault was the driver of the bus and, as a consequence, said driver was charged with triple homicide thru reckless imprudence in the Court of First Instance of Cavite (Criminal Case No. 10771). Defendants claim that inasmuch as the present case involves the same issues as those in the case filed against the driver of the bus, the same should be held in abeyance until after the final termination of the criminal case. Defendant Cayetano Tahimik further claims that he is not and has never been the owner of the jeepney and cannot therefore be held responsible for the damages caused by it.

After the parties had presented their evidence, the lower court rendered decision dismissing the case holding that defendants are not liable because it was not proven that the collision which resulted in the death of Tomasita Arca was due to the negligence of the driver of the jeepney whose ownership is attributed to defendants. From this decision plaintiffs have appealed.

The Court of Appeals affirmed the decision appealed from, but in so doing it predicated its affirmance not on plaintiffs' failure to prove that the collision was due to the negligence of the driver but on the fact that Marcelino Ignacio was not the one operating the jeepney but one Leoncio Tahimik who had leased the jeepney by virtue of a document duly executed by the parties. And not agreeable to this finding, plaintiffs filed the present petition for review.

In their first assignment of errors, petitioners claim that the lower court erred in ruling that to maintain an action for damages caused by the breach of a carrier's obligation to carry a passenger safely to his destination it is necessary to prove that the damages were caused by the negligence of the driver of said carrier in order that

liability may attach which, they claim, is contrary to the ruling of this court in the case of *Castro vs. Acro Taxicab Co.*, 46 Off. Gaz., pp. 2028-2029. But we notice that while such is the ruling entertained by the lower court it was not concurred in by the Court of Appeals so much so that it made an express manifestation that it fully agreed with the theory of petitioners. The ruling of the court below having been overruled, we see no reason why the same issue should now be reiterated in this instance.

The second error refers to the person who was actually operating the jeepney at the time of collision. It is claimed that while Marcelino Ignacio, owner of the jeepney, has leased the same to one Leoncio Tahimik on June 8, 1948, and that at the time of collision it was the latter who was actually operating it, the contract of lease was null and void because it was not approved by the Public Service Commission as required by section 16, paragraph h, of the Public Service Law.

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.

It may be argued that section 16, paragraph (h) provides in its last part that "nothing herein contained shall be construed to prevent the sale, alienation, or lease by any public utility of any of its property in the ordinary course of business", which gives the impression that the approval of the Public Service Commission is but a mere formality which does not affect the effectivity of the transfer or lease of the property belonging to a public utility. But such provision only means that even if the approval has not been obtained the transfer or lease is valid and binding between parties although not effective against the public and the Public Service Commission. The approval is only necessary to protect public interest.

Wherefore, the decision appealed from is reversed. Judgment is hereby rendered ordering the defendant Marcelino Ignacio to pay the plaintiffs the sum of P31,000 as damages, with costs.

Paras, C. J., Pablo, Bengzon, Padilla and Jugo, JJ., concur.

Reyes, J., concurring and dissenting: I concur in the result, but must express my disconformity to that part of the majority opinion which holds that the sale by a public utility of any of its property without the approval of the Public Service Commission is binding between the parties though not effective against the public. This, I believe, is a misconstruction of section 16, paragraph h, of the Public Service Law.

Tuason, J., concurs.

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