

GERMAN C. GARCIA, LUMINOSA L. GARCIA, AND ESTER FRANCISCO, PETITIONERS, VS. THE HONORABLE MARIANO M. FLORIDO OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, MARCELINO INES...*G.R. No. L-35095. August 31, 1973*

Ponente: ANTONIO, J.

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Appeal by certiorari from the decision of the Court of First Instance of Misamis Occidental, Branch III, in Civil Case No. 2850 (German C. Garcia, et al. vs. Marcelino Inesin, et al.) dated October 21, 1971, dismissing petitioners' action for damages against respondents, Mactan Transit Co., Inc. and Pedro Tumala, "without prejudice to refiling the said civil action after conviction of the defendants in the criminal case filed by the Chief of Police of Sindangan, Zamboanga del Norte", and from the order of said Court dated January 21, 1972, denying petitioners' motion for reconsideration.

On August 4, 1971, petitioners, German C. Garcia, Chief of the Misamis Occidental Hospital, together with his wife, Luminosa L. Garcia, and Ester Francisco, bookkeeper of said hospital, hired and boarded a PU car with plate No. 241-8 G Ozamis 71 owned and operated by respondent, Marcelino Inesin, and driven by respondent, Ricardo Vayson, for a round-trip from Oroquieta City to Zamboanga City, for the purpose of attending a conference of chiefs of government hospitals, hospital administrative officers, and bookkeepers of Regional Health Office No. 7 at Zamboanga City. At about 9:30 a.m., while the PU car was negotiating a slight curve on the national highway at kilo-meter 21 in Barrio Guisukan, Sindangan, Zamboanga del Norte, said car collided with an oncoming passenger bus (No. 25) with plate No. 77-4 W Z.N. 71 owned and operated by the Mactan Transit Co., Inc. and driven by defendant, Pedro Tumala. As a result of the afore-said collision, petitioners sustained various physical injuries which necessitated their medical treatment and hospitalization.

Alleging that both drivers of the PU car and the passenger bus were at the time of the accident driving their respective vehicles at a fast clip, in a reckless, grossly negligent and imprudent manner in gross violation of traffic rules and without due regard to the safety of the passengers aboard the PU car, petitioners, German C. Garcia, Luminosa L. Garcia, and Ester Francisco, filed on September 1, 1971 with respondent Court of First Instance of Misamis Occidental an action for damages (Civil Case No. 2850) against the private respondents, owners and drivers, respectively, of the PU car and the passenger bus that figured in the collision, with prayer preliminary attachment.

On September 16, 1971, Marcelino Inesin and Ricardo Vayson filed their answer in the aforementioned Civil Case No. 2850 admitting the contract of carriage with petitioners but alleged, by way of defense, that the accident was due to the negligence and reckless imprudence of the bus driver, as when Ricardo Vayson, driver of the PU car, saw the oncoming passenger bus No. 25 coming from the opposite direction ascending the incline at an excessive speed, chasing another passenger bus, he had to stop the PU car in order to give way to the passenger

bus, but, in spite of such precaution, the passenger bus bumped the PU car, thus causing the accident in question, and, therefore, said private respondents could not be held liable for the damages caused on petitioners.

On September 29, 1971, respondents, Mactan Transit Co., Inc. and Pedro Tumala, filed a motion to dismiss on three (3) grounds, namely: 1) that the plaintiffs (petitioners) had no cause of action; 2) that the complaint carries with it a prayer for attachment but without the requisite verification, hence defective under the provision of Sec. 3, Rule 57 of the Rules of Court; and 3) that the defendants (respondents), Mactan Transit Co., Inc. and its driver, accused Pedro Tumala, had operated said passenger bus with maximum care and prudence.

The principal argument advanced in said motion to dismiss was that the petitioners had no cause of action for on August 11, 1971, or 20 days before the filing of the present action for damages, respondent Pedro Tumala was charged in Criminal Case No. 4960 of the Municipal Court of Sindangan, Zamboanga del Norte, in a complaint filed by the Chief of Police for "double serious and less serious physical injuries through reckless imprudence", and that, with the filing of the aforesaid criminal case, no civil action could be filed subsequent thereto unless the criminal case has been finally adjudicated, pursuant to Sec. 3 of Rule 111 of the Rules of Court, and, therefore, the filing of the instant civil action is premature, because the liability of the employer is merely subsidiary and does not arise until after final judgment has been rendered finding the driver, Pedro Tumala, guilty of negligence; that Art. 33 of the New Civil Code, is not applicable because Art. 33 applies only to the crimes of physical injuries or homicide, not to the negligent act or imprudence of the driver.

On October 14, 1971, petitioners filed an opposition to said motion to dismiss alleging that the aforesaid action for damages was instituted not to enforce the civil liability of the respondents under Art. 100 of the Revised Penal Code but for their civil liability on quasi-delicts pursuant to Articles 2176-2194, as the same negligent act causing damages may produce civil liability arising from a crime under the Revised Penal Code or create an action for quasi-delict or culpa extra-contractual under the Civil Code, and the party seeking recovery is free to choose which remedy to enforce.

In dismissing the complaint for damages in Civil Case No. 2850, the lower court sustained the arguments of respondents, Mactan Transit Co., Inc. and Pedro Tumala, and declared that whether or not "the action for damages is based on criminal negligence or civil negligence known as culpa aquiliana in the Civil Code or tort under American law" there "should be a showing that the offended party expressly waived the civil action or reserved his right to institute it separately" and that "the allegations of the complaint in culpa aquiliana must not be tainted by any assertion of violation of law or traffic rules or regulations" and because of the prayer in the complaint asking the Court to declare the defendants jointly and severally liable for moral, compensatory and exemplary damages, the Court is of the opinion that the action was not based on "culpa aquiliana or quasi-delict."

Petitioners' motion for reconsideration was denied by the trial court on January 21, 1972, hence this appeal on certiorari.

There is no question that from a careful consideration of the allegations contained in the complaint in Civil Case No. 2850, the essential averments for a quasi-delictual action under Articles 2176-2194 of the New Civil Code are present, namely: a) act or omission of the private respondents; b) presence of fault or negligence or the lack of due care in the operation of the passenger bus No. 25 by respondent Pedro Tumala resulting in the collision of the bus with the passenger car; c) physical injuries and other damages sustained by petitioners as a result of the collision; d) existence of direct causal connection between the damage or prejudice and the fault or negligence of private respondents; and e) the absence of pre-existing contractual relations between the parties. The circumstance that the complaint alleged that respondents violated traffic rules in that the driver drove the vehicle "at a fast clip in a reckless, grossly negligent and imprudent manner in violation of traffic rules and without due regard to the

safety of the passengers aboard the PU car" does not detract from the nature and character of the action, as one based on culpa aquiliana. The violation of traffic rules is merely descriptive of the failure of said driver to observe for the protection of the interests of others, that degree of care, precaution and vigilance which the circumstances justly demand, which failure resulted in the in-jury on petitioners. Certainly excessive speed in violation of traffic rules is a clear indication of negligence. Since the same negligent act resulted in the filing of the criminal action by the Chief of Police with the Municipal Court (Criminal Case No. 4960) and the civil action by petitioners, it is inevitable that the aver-ments on the drivers' negligence in both complaints would substantially be the same. It should be emphasized that the same negligent act causing damages may produce a civil liability arising from a crime under Art. 100 of the Revised Penal Code or create an action for quasi-delict or culpa extra-contractual under Arts. 2176-2194 of the New Civil Code. This distinction has been amply explained in *Barredo vs. Garcia, et al.* (73 Phil. 607, 620-621).[1]

It is true that under Sec. 2 in relation to Sec. 1 of Rule 111 of the Revised Rules of Court which became effective on January 1, 1964, in the cases provided for by Articles 31, 33, 39 and 2177 of the Civil Code, an independent civil action entirely se-parate and distinct from the civil action, may be instituted by the injured party during the pendency of the criminal case, provided said party has reserved his right to institute it separately, but it should be noted, however, that neither Section 1 nor Sec-tion 2 of Rule 111 fixes a time limit when such reservation shall be made. In *Tactaquin v. Palileo*,[2] where the reservation was made after the tort-feasor had already pleaded guilty and after the private prosecutor had entered his appearance jointly with the pros-ecuting attorney in the course of the criminal proceedings, and the tort-feasor was convicted and sentenced to pay damages to the of-fended party by final judgment in said criminal case, We ruled that such reservation is legally ineffective because the offended party cannot recover damages twice for the same act or omission of the defendant. We explained in *Meneses v. Luat*[3] that when the criminal action for physical injuries against the defendant did not proceed to trial as he pleaded guilty upon arraignment and the Court made no pronouncement on the matter of damages suffered by the injured party, the mere appearance of private counsel in represent-ation of the offended party in said criminal case does not constitute such active intervention as could impart an intention to press a claim for damages in the same action, and, therefore, cannot bar a separ-ate civil action for damages subsequently instituted on the same ground under Article 33 of the New Civil Code.

In the case at bar, there is no question that petitioners never intervened in the criminal action instituted by the Chief of Police against respondent Pedro Tumala, much less has the said criminal action been terminated either by conviction or acquittal of said accused.

It is, therefore, evident that by the institution of the present civil action for damages, petitioners have in effect abandoned their right to press recovery for damages in the criminal case, and have opted instead to recover them in the present civil case. As a result of this action of petitioners the civil liability of private respondents to the former has ceased to be involved in the criminal action. Undoubtedly an offended party loses his right to intervene in the prosecution of a criminal case, not only when he has waived the civil action or expressly reserved his right to institute, but also when he has actually instituted the civil action. For by either of such actions his interest in the crim-inal case has disappeared.

As we have stated at the outset, the same negligent act causing damages may produce a civil liability arising from crime or create an action for quasi-delict or culpa extra-contractual. The former is a violation of the criminal law, while the latter is a distinct and inde-pendent negligence, having always had its own foundation and indivi-duality. Some legal writers are of the view that in accordance with Article 31, the civil action based upon quasi-delict may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. Hence, "the proviso in Section 2 of Rule 111 with reference to x x x Articles 32, 33 and 34 of

the Civil Code is contrary to the letter and spirit of the said articles, for these articles were drafted x x x and are intended to constitute as exceptions to the general rule stated in what is now Section 1 of Rule 111. The proviso, which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the proviso." [4] But in whatever way We view the institution of the civil action for recovery of damages under quasi-delict by petitioners, whether as one that should be governed by the provisions of Section 2 of Rule 111 of the Rules which require reservation by the injured party considering that by the institution of the civil action even before the commencement of the trial of the criminal case, petitioners have thereby foreclosed their right to intervene therein, or one where reservation to file the civil action need not be made, for the reason that the law itself (Article 33 of the Civil Code) already makes the reservation and the failure of the offended party to do so does not bar him from bringing the action, under the peculiar circumstances of the case, We find no legal justification for respondent court's order of dismissal.

WHEREFORE, the decision and order appealed from are hereby reversed and set aside, and the court a quo is directed to proceed with the trial of the case. Costs against private respondents.

Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, and Esguerra, JJ., concur.

Makalintal, Acting C.J., concurs in the result.

Barredo, J., concurs in a separate opinion.

[1] "Firstly, the Revised Penal Code in article 365 punishes not only reckless but also simple negligence. If we were to hold that articles 1902 to 1910 of the Civil Code refer only to fault or negligence not punished by law, according to the literal import of article 1093 of the Civil Code, the legal institution of culpa aquiliana would have very little scope and application in actual life. Death or injury to persons and damage to property through any degree of negligence — even the slightest — would have to be indemnified only through the principle of civil liability arising from a crime. In such a state of affairs, what sphere would remain for cuasi-delito or culpa aquiliana? We are loath to impute to the lawmaker any intention to bring about a situation so absurd and anomalous. Nor are we, in the interpretation of the laws, disposed to uphold the letter that killeth rather than the spirit that giveth life. We will not use the literal meaning of the law to smother and render almost lifeless a principle of such ancient origin and such full-grown development as culpa aquiliana or cuasi-delito, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code.

"Secondly, to find the accused guilty in a criminal case, proof of guilt beyond reasonable doubt is required, while in a civil case, preponderance of evidence is sufficient to make the defendant pay in damages. There are numerous cases of criminal negligence which can not be shown beyond reasonable doubt, but can be proved by a preponderance of evidence. In such cases, the defendant can and should be made responsible in a civil action under articles 1902 to 1910 of the Civil Code. Otherwise, there would be many instances of unvindicated civil wrongs. Ubi jus ibi remedium.

"Thirdly, to hold that there is only one way to make defendant's liability effective, and that is, to sue the driver and exhaust his (the latter's) property first, would be tantamount to compelling the plaintiff to follow a devious and cumbersome method of obtaining relief. True, there is such a remedy under our laws, but there is also a more expeditious way, which is based on the primary and direct responsibility of the defendant under article 1903 of the Civil Code. Our view of the law is more likely to facilitate remedy for civil wrongs, because the procedure indicated by the defendant is wasteful and productive of delay, it being a matter of common knowledge that professional drivers of taxis and similar public conveyances usually do not have sufficient means with which to pay damages. Why, then, should the plaintiff be required in all cases to go through this roundabout, unnecessary, and probably useless procedure? In construing the laws, courts have endeavored to

shorten and facilitate the pathways of right and justice.

"At this juncture, it should be said that the primary and direct responsibility of employers and their pre-sumed negligence are principles calculated to protect society. Workmen and employees should be carefully chosen and supervised in order to avoid injury to the public. It is the masters or employers who principally reap the profits resulting from the services of these servants and employees. It is but right that they should guarantee the latter's careful conduct for the personnel and patrimonial safety of others. As Theilhard has said, 'they should reproach themselves, at least, some for their weakness, others for their poor selection and all for their negligence.' And according to Manresa, 'It is much more equitable and just that such responsibility should fall upon the principal or director who could have chosen a careful and prudent employee, and not upon the injured person who could not exercise such selection and who used such employee because of his confidence in the principal or director.' (Vol. 12, p. 622, 2nd Ed.) Many jurists also base this primary responsibility of the employer on the principle of representation of the principal by the agent. Thus, Oyuelos says in the work already cited (Vol. 7, p. 747) that before third persons the employer and employee 'vienen a ser como una sola personalidad, por refundicion de la del dependiente en la de quien le emplea y utiliza.' (become as one personality by the merging of the person of the employee in that of him who employs and utilizes him.) All these observations acquire a peculiar force and significance when it comes to motor accidents, and there is need of stressing and accentuating the responsibility of owners of motor vehicles.

"Fourthly, because of the broad sweep of the provisions of both the Penal Code and the Civil Code on this subject, which has given rise to the overlapping or concurrence of spheres already discussed, and for lack of understanding of the character and efficacy of the action for culpa aquiliana, there has grown up a common practice to seek damages only by virtue of the civil responsibility arising from a crime, forgetting that there is another remedy, which is by invoking articles 1902-1910 of the Civil Code. Although this habitual method is allowed by our laws, it has nevertheless rendered practically useless and nugatory the more expeditious and effective remedy based on culpa aquiliana or culpa extra-contractual. In the present case, we are asked to help perpetuate this usual course. But we believe it is high time we pointed out to the harm done by such practice and to restore the principle of responsibility for fault or negligence under articles 1902 et seq. of the Civil Code to full rigor. It is high time we cause the stream of quasi-delict or culpa aquiliana to flow on its own natural channel, so that its waters may no longer be diverted into that of a crime under the Penal Code. This will, it is believed, make for the better safe-guarding of private rights because it re-establishes an ancient and additional remedy, and for the further reason that an independent civil action, not depending on the issues, limitations and results of a criminal prosecution, and entirely directed by the party wronged or his counsel, is more likely to secure adequate and efficacious redress."

[2] G.R. No. L-20865, September 29, 1967, 21 SCRA 346.

[3] G.R. No. L-18116, November 28, 1964, 12 SCRA 454.

[4] Footnote of Justice Capistrano in *Corpus v. Paje*, G.R. No. L-26737, July 31, 1969, 28 SCRA, 1062, 1069. *CF. Tolentino, Commentaries and Jurisprudence on the Civil Code*, Vol. 1, page 142, 1968 Ed.

CONCURRING
BARREDO, J.:

I would like to limit my concurrence.

I believe that the only substantive legal provision involved in this case are Articles 2176 and 2177 of the Civil Code which read as follows:

"ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between

the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

"ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

These provisions definitely create a civil liability distinct and different from the civil action arising from the offense of negligence under the Revised Penal Code. Since Civil Case No. 2850 is predicated on the above civil code articles and not on the civil liability imposed by the Revised Penal Code, I cannot see why a reservation had to be made in the criminal case. As to the specific mention of Article 2177 in Section 2 of Rule 111, it is my considered view that the latter provision is inoperative, it being substantive in character and is not within the power of the Supreme Court to promulgate, and even if it were not substantive but adjective, it cannot stand because of its inconsistency with Article 2177, an enactment of the legislature superseding the Rules of 1940.

Besides, the actual filing of Civil Case No. 2850 should be deemed as the reservation required, there being no showing that prejudice could be caused by doing so.

Accordingly, I concur in the judgment reversing the order of dismissal of the trial court in order that Civil Case No. 2850 may proceed, subject to the limitation mentioned in the last sentence of Article 2177 of the Civil Code, which means that of the two possible judgments, the injured party is entitled exclusively to the bigger one.

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