

NATALIA FERNANDO, PEDRO ANDRES, PONCIANO ANDRES, ADOLFO ANDRES, FLAVIANA ANDRES, TELESFORO ANDRES AND ESTEBAN ANDRES, JR., PLAINTIFFS-APPELLEES, VS. ANASTACIO FRANCO, DEFENDANT-...

G.R. No. L-27786. January 30, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

It is beyond dispute that a judgment of conviction in the case of a driver accused of homicide through reckless imprudence, there being no collusion between the accused and the offended party, conclusively binds the employer to answer subsidiarily for the damages awarded. So it has been since the lead-ing case of *Martinez v. Barredo*.^[1] Necessarily then, in this appeal from a judgment of the Court of First Instance of Ilocos Norte holding defendant-appellant Anastacio Franco, as employer, liable for the indemnity awarded, the plaintiffs-appellees,^[2] the heirs of the deceased who met his death as a result of being run over by a driver of a passenger truck owned by defendant-appellant and thereafter prosecuted and convicted for the crime of homicide through reckless imprudence, the only way responsibility may be avoided by defendant-appellant for the amount in question is for a legal defense sufficient in law to defeat such a claim. He would invoke prescription, basing his defense on the fact that it took plaintiffs-appellees five years and eleven months after the accident, but hardly over a year after the finality of the judgment of conviction for such crime by the Court of Appeals. On its face, such a defense is without merit. So the lower court held. It is the only legal issue raised in this appeal before us. The lower court must be sustained.

From the stipulation of facts, it was shown that defendant was authorized to operate units, trucks or buses for public convenience within the province of Ilocos Norte; that one of his buses driven by his employee, the driver, Leonardo Cabaron, ran over a child, Nonito Andres, on January 11, 1958 resulting in his death. Thereafter, on May 23, 1958, Leonardo Cabaron was accused in a criminal case for homicide through reckless imprudence and convicted by the Court of First Instance of Ilocos Norte, which judgment was affirmed on appeal in September 1962 by the Court of Appeals. Then came the complaint filed on December 12, 1963 where, in addition to the amount of P6,000.00 given as indemnity, moral damages, attorney's fees and exemplary damages were sought by plaintiffs-appellees. Even in the lower court the defense raised was that of prescription. A judgment was rendered by the Court of First Instance of Ilocos Norte on October 5, 1965, ordering that the amount of P6,000.00, the indemnification awarded the plaintiffs-appellees as heirs in the criminal case against the driver, Leonardo Cabaron, be paid by defendant to such plaintiffs-appellees.

Hence this appeal on a question of law, with defendant-appellant expressly submitting "that the one and only legal issue to be resolved" by this Court "is [whether or not the instant case has already prescribed]." As was made clear at the outset, the answer cannot be in doubt. No case for prescription has been made out. The finality of the judgment of the Court of Appeals affirming the conviction of the driver must have come at the earliest in October 1962 in a decision having been promulgated in September of that year. It was only then that there is a legal basis

for the claim against defendant-appellant as employer. As of that time there was no more question as to his subsidiary liability. The judgment against him had become final and conclusive. The assertion therefore that the civil action filed on December 12, 1963, scarcely a year after the right against the employer had accrued, cannot, by any stretch of imagination, be considered as having prescribed. The defense of prescription is devoid of any support in law.[3]

While there is no such pronouncement to this effect, *Manalo v. Robles Transportation Company, Inc.*, [4] necessarily points to the conclusion that where a criminal action has been filed for homicide through reckless imprudence against the driver of the vehicle responsible for such mishap, the codal provision requiring that the action based on quasi-delict be instituted within four years is not applicable.[5] In this case, the accident happened on August 9, 1947 and it was not until February 17, 1953, or after a period of more than five years, that the parents of the deceased filed the action against the defendant-owner and operator of a taxicab for his subsidiary liability after the driver had been prosecuted and convicted for homicide through reckless imprudence. There is no allegation nor can it be shown that the criminal action was not filed within the prescriptive period. The conclusion that prescription can not be relied upon as a defense is unavailing and is solidly buttressed in law. It may be stated further that since it was not only in the latter part of October 1962 that the decision against the driver attained finality and became executory, had plaintiffs relied on suing out a writ of execution against the employer, it could have had until October 1967 at the latest to take such a step. Since clearly the case was filed on December 12, 1963, there is thus added reinforcement to the decision of the lower court that there is no legal bar to holding defendant-appellant subsidiarily liable to plaintiffs in this case.

WHEREFORE, the lower court decision of October 5, 1965 is affirmed. With costs against defendant-appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] 81 Phil. 1 (1948).

[2] The plaintiffs-appellees are: Natalia Fernando, Pedro Andres, Ponciano Andres, Adolfo Andres, Flaviana Andres, Telesforo Andres and Esteban Andres, Jr.

[3] *Martinez v. Barredo*, 81 Phil. 1 (1948). Cited with approval in *Nagrampa v. Mulvaney McMillan & Co., Inc.*, 97 Phil. 724 (1955); *Miranda v. Malate Garage & Taxicab Inc.*, 99 Phil. 670 (1956); *Manalo v. Robles Transportation Co. Inc.*, 99 Phil. 729 (1956); *Bantoto v. Bobis*, L-18966, Nov. 22, 1966, 18 SCRA 690; *Jocson v. Glorioso*, L-22686, Jan. 30, 1968, 22 SCRA 316; *M. D. Transit & Taxi Co., Inc. v. Court of Appeals*, L-23882, Feb. 17, 1968, 22 SCRA 559.

[4] 99 Phil. 729 (1956).

[5] Article 1146 of the Civil Code provides: "The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; (2) Upon a quasi-delict."

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