

**FE PEREZ, PLAINTIFF-APPELLANT, VS. JOSEFINA GUTIERREZ,
DEFENDANT-THIRD-PARTY PLAINTIFF-APPELLEE, PANFILO
ALAJAR, THIRD-PARTY DEFENDANT-APPELLEE.**

G.R. No. L-30115. September 28, 1973

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This appeal from the decision dated June 9, 1967 of the Court of First Instance of Davao in its civil case 3163 poses objections to the manner the trial court adjudicated the claim for damages filed by the plaintiff-appellant Fe Perez against the defendant-third-party plaintiff-appellee Josefina Gutierrez.

The complaint (later amended) filed on October 29, 1959 by Fe Perez with the Court of First Instance of Davao against Josefina Gutierrez, for breach of contract of carriage, alleges that on September 6, 1959 while she, together with nine co-teachers, was a passenger of an AC jeepney registered under the name of the defendant Gutierrez, the said vehicle, due to the reckless negligence of its driver Leopoldo Cordero, met with an accident, resulting in injuries to herself which required her hospitalization. In her answer, Josefina Gutierrez averred that if the claim of Fe Perez is at all justified, responsibility therefor should devolve on one Panfilo Alajar, the actual owner, by purchase, of the said passenger jeepney when the accident occurred and against whom she has filed a third-party complaint.

The deed of sale attached to the third-party complaint recites, inter alia,

"That it is mutually agreed by the herein vendor and vendee that the TITLE to the aforementioned vehicle shall remain with the VENDOR, pending approval of the herein SALE by the Public Service Commission, said motor vehicle being registered as a public utility auto-calesa under 'AC' denomination; x x x

"That the vendee herein, by these presents, do [sic] hereby binds himself and do [sic] hereby assume, [sic] responsibility for all actions, claims, demands, and rights of action, of whatever kind and nature, that may hereafter develop as a consequence of or in the course of operation of the aforementioned vehicle; x x x"

In his answer to the third-party complaint, Panfilo Alajar disclaimed responsibility for the accident, alleging that (a) the mentioned deed of sale is null and void because it has not been registered with the Public Service Commission despite repeated demands on the 3rd-party complainant to do so; (b) the said passenger jeepney remained in the control of the 3rd-party complainant who, together with her lawyer-husband, had been collecting rentals from him for the use of the said vehicle; and (c) by express agreement, title to the said vehicle remained with the 3rd-party complainant pending approval of the sale by the Public Service Commission.

The defendant Leopoldo Cordero was declared in default and did not appeal.

On June 9, 1967, after trial on the merits, the court a quo rendered its decision, in the main finding Leopoldo Cordero guilty of reckless imprudence, and finding that Panfilo Alajar owned and operated the auto calea in question and, in fact, after the accident, even assumed responsibility for the payment of the hospital bills due to

the Brokenshire Memorial Hospital for treatment of the injuries suffered by Fe Perez. Based on these findings as well as the proof of the damages suffered by Fe Perez, the court adjudged as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering third-party defendant Panfilo Alajar to pay plaintiff the amount of P1,552.20 hospital expenses; P2,000.00, actual damages; P5,000.00 moral damages; P500.00 incidental expenses; and P2,000.00 attorney's fees.

"Ordering likewise Panfilo Alajar to pay defendant third-party plaintiff Josefina Gutierrez P500.00 moral damages; and P1, 000.00 attorney's fees, and to pay the costs of the proceedings on both cases."

The present appeal questions the correctness of the dispositive portion of the decision a quo which adjudged Panfilo Alajar, instead of Josefina Gutierrez, as the party liable to her for the payment of the damages adjudicated in her favor. Specifically, Fe Perez argues that the registered owner of a motor vehicle should be the one held liable for damages resulting from breach of contract of carriage by a common carrier.

We find the appeal meritorious and in accord with settled law on the matter.

In *Peralta vs. Mangusang*[1] this Court, in approbation of a similar argument, said:

"The law (Sec. 20 [g], Public Service Act) really requires the approval of the Public Service Commission in order that a franchise, or any privileges 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 submitted for approval of the Public Service Commission, so that the latter may take proper safeguards to protect the interest of the public. 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 on 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 for the consequences incident to the operation of the vehicle, one of them being the collision under consideration. (*Montoya v. Ignacio*, 50 O. G. No. 1, 108; *Vda. de Medina, et al. v. Cresencia, et al.*, 52 O.G. No. 10, 4606; *Erezo v. Jepte, et al.*, G.R. No. L-9605, Sept. 30, 1957; *Tamayo v. Aquino*, 56 O. G. No. 36, 5617)."

In the earlier case of *Erezo vs. Jepte*,[2] which is cited in the foregoing opinion, this Court held that the doctrine making the registered owner of a common carrier answerable to the public for negligence injuries to its passengers or third persons, even though the vehicle had already been transferred to another, is based upon the principle--

"xxx that in dealing with vehicles registered under the Public Service Law, the public has the right to assume or presume that the registered owner is the actual owner thereof, for it would be difficult for the public to enforce the actions that they may have for injuries caused to them by the vehicles being negligently operated if the public should be required to prove who the actual owner is. How would the public or third persons know against whom to enforce their rights in case of subsequent transfers of the vehicles? We do not imply by this doctrine, however, that the registered owner may not recover whatever amount he had paid by virtue of his liability to third persons from the person to whom he had actually sold, assigned or conveyed the vehicle."

In *Tamayo vs. Aquino*,[3] also cited in *Mangusang, supra*, this Court, reiterating what was stated en passant in *Jepte, supra*, described the nature of the liability of the actual transferee of a vehicle the negligent operation of which gives rise to injuries to its passengers:

"The question that is posed, therefore, is how should the holder of the certificate of public convenience Tamayo participate with his transferee, operator Rayos, in the damages recoverable by the heirs of the deceased passenger, if their liability is not that of joint tortfeasors in accordance with Article 2194 of the Civil Code. The following considerations must be borne in mind in determining this question. 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, for the reasons given in our decision in the case of Erez vs. Jepte, supra, as quoted above. But as the transferee, who operated the vehicle when the passenger died, is the one directly responsible for the accident and death, he should in turn be made responsible to the registered owner for what the latter may have been adjudged to pay. In operating the truck without transfer thereof having been approved by the Public Service Commission, the transferee acted merely as agent of the registered owner and should be responsible to him (the registered owner), for any damages that he may cause the latter by his negligence."

Upon the foregoing, it is quite clear that the court below erred in holding Panfilo Alajar, rather than Josefina Gutierrez, as the one directly liable to Fe Perez for the latter's injuries and the corresponding damages incurred. This Court notes, moreover, that the court below inexplicably failed to hold the driver (Leopoldo Cordero), whom it found guilty of reckless imprudence, jointly and solidarily liable with Josefina Gutierrez to Fe Perez in accordance with the provisions of article 2184 in relation to article 2180 of the new Civil Code.[4]

ACCORDINGLY, the judgment below is hereby modified in the sense that Josefina Gutierrez and Leopoldo Cordero are hereby adjudged directly and jointly and solidarily liable to Fe Perez for the sums adjudicated in the judgment below in her (Fe Perez') favor, while Panfilo Alajar is, in turn, hereby held answerable to Josefina Gutierrez for such amount as the latter may pay to Fe Perez in satisfaction of the judgment appealed from. Costs against both the defendant-third party plaintiff-appellee Josefina Gutierrez and the third party defendant-appellee Panfilo Alajar.

Makalintal, Acting C.J., Zaldivar, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] L-18110, July 31, 1964, 11 SCRA 598.

[2] 102 Phil. 106. (See also Roque vs. Malibay Transit, Inc., 97 Phil. 1004).

[3] 105 Phil. 949.

[4] Viluan vs. Court of Appeals, L-21477-81, April 29, 1966, 29, 1966.

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