

DE LEON BROKERAGE CO., INC., PETITIONER, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.

G. R. No. L-15247. February 28, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Review of the decision of the Court of Appeals affirming the decision of the court of first instance of Manila which ordered petitioner and its employee, Augusto Luna, to pay jointly and severally to respondent Angeline Steen P12,183.70 as actual and moral damages, and attorney's fees.

The awards were for injuries said respondent suffered as a result of the collision between the passenger jeepney in which she was riding, and petitioner's cargo truck recklessly driven by its employee, Luna, and for which the latter had been prosecuted and convicted of the crime of homicide with physical injuries thru reckless imprudence. In the criminal action against Luna (and the driver of the passenger jeepney, who was, however, acquitted), respondent had reserved her right to file a separation civil action.

After a judgment of conviction had been rendered, respondent filed in the Court of First Instance of Manila an action for recovery of damages against Luna and petitioner. As proof of Luna's negligence, she presented during the hearing the judgment of conviction in the criminal case, Exh. B; and likewise established her claim for actual, moral and exemplary damages. Defendants, that is, Luna and petitioner, sought to prove by means of the former's testimony that he was not engaged in the performance of his duties at the time of the accident.

Said court rendered judgment—which on appeal was affirmed by the Court of Appeals—holding petitioner and Luna solidarity liable to respondent for the sums of P1,183.70 for actual expenses; P3,000.00 for unpaid medical fees; P7,000.00 as moral damages; and P1,000.00 as attorney's fees; all amounts to earn legal interest from the filing of the complaint, plus costs.

Seeking reversal of such affirmance by the Appellate Court, De Leon Brokerage claims that: (1) the allegations in respondent's complaint were so ambiguous that it was not clear whether she was suing for damages resulting from a quasi-delict or for civil liability arising from crime, but since the averments therein are more characteristic of an action of the latter nature, the same, as against petitioner, is premature for failure to allege the insolvency of its employee; (2) the judgment of conviction, Exh. B, is not admissible against it as evidence of a quasi-delict; (3) its employee, Luna, was not in the discharge of his duties at the time of the accident; and (4) it cannot be held solidarity liable with Luna for damages.

The court of origin and the appellate court correctly considered respondent's complaint to be based on a quasi-delict. She alleged that she suffered injuries because of the carelessness and imprudence of petitioner's chauffeur, who was driving the cargo truck TH-776 belonging to petitioner, which truck collided with the passenger jeepney wherein she was riding. Since averment had been made of the employer-employee relationship and of the damages caused by the employee on occasion of his function, there is a clear statement of a right of action under Article 2180 of the Civil Code. The complaint does not, and did not have to allege that petitioner did

not exercise due diligence in choosing and supervising Luna, because this is a matter of defense.

Contrary to petitioner's view, respondent is holding it liable for its own lack of care. Her allegation "that the acts of the defendants above described constitute gross negligence and recklessness", plainly refers to petitioner's act of employing Luna as driver of its cargo truck, and to Luna's careless manner of driving it.

Whatever doubts remain as to the nature of respondent's action are resolved by her prayer that petitioner and its employee be held solidarity liable.

According to petitioner, what causes confusion as to the nature of respondent's action are the allegations of Luna's conviction (a copy of the judgment of conviction was attached to the complaint), and the express reservation by respondent of her civil action—circumstances, petitioner argues, which infallibly characterize an action for civil indemnity under the criminal code.

But respondent clearly did not base her suit on the criminal conviction. This fact, it is true, was alleged in a paragraph separate from her allegation of Luna's negligence as having been the cause of her injuries; but mention of the criminal conviction merely tended to support her claim that Luna had been recklessly negligent in driving the truck. Being evidentiary, the allegation could have been disregarded.

Respondent neither had to wait for the termination of the criminal proceeding nor to reserve in the same her right to file a separate civil action.[1] She waited for the results of the criminal action because she wanted to be sure which driver and respective employer she could rightly sue, since both Luna and the driver of the passenger jeepney were prosecuted. And she reserved because, otherwise, the court in the criminal proceeding would have awarded her indemnity, since the civil action for recovery of civil liability arising from the offense is deemed instituted with the criminal action.[2] In such event, she would no longer be able to file the separate civil action contemplated by the civil code, not because of failure to reserve the same but because she would have already received indemnity for her injuries.[3]

Plainly, the reservation made in the criminal action does not preclude a subsequent action based on a quasi-delict. It cannot be inferred therefrom that respondent had chosen to file the very civil action she had reserved. The only conclusion that can reasonably be drawn is that she did not want the question of damages threshed out in the criminal action, but preferred to have this issue decided in a separate civil action.

At any rate, if respondent's complaint, which was clear enough, had created confusion in petitioner's mind as to the foundation of her cause of action, then it should have moved for a more definite statement of the same before the trial.

However, it seems that petitioner understood quite well that it was being held liable under the civil code. In its answer, it alleged as an affirmative defense that in the selection and supervision of its employees and drivers, it had exercised the diligence of a good father of a family—a defense available only to an employer being sued for a quasi-delict. Petitioner argues that, not knowing the nature of respondent's action and deciding to play it safe, it put up defenses both against a suit for quasi-delict and against an action for civil liability arising from crime.

Yet, it did not aver that the complaint failed to allege that its employee was insolvent—the defense consistent with an action against an employer for subsidiary liability under the criminal code. What it alleged was that the complaint failed to state a cause of action as against it, which could not be sustained since the complaint sufficiently alleges an action based on quasi-delict and the court could validly have granted respondent's prayer for relief.[4]

Considering that the judgment of conviction, Exh. B, had been admitted without objection, its competency can no

longer be questioned on appeal.[5] It established the fact of Luna's negligence, giving rise to the presumption that petitioner had been negligent in the selection and supervision of its employee.[6] And petitioner failed to prove that it had exercised such requisite care and diligence as would relieve it from responsibility.

But, was Luna in the performance of his duties at the time of the collision? He testified that on the day of the accident he had been instructed to go to Pampanga, from there to proceed to Nueva Ecija, but that after unloading his cargo in Pampanga, he at once returned to Manila. However, his reason for immediately returning to Manila is not clear. He could have returned for purposes of repair. It does not appear that he was on an errand of his own. In the absence of determinative proof that the deviation was so complete as would constitute a cessation or suspension of his service, petitioner should be held liable.[7] In fact, the Court of Appeals disbelieved the alleged violation of instructions.

Since both Luna and petitioner are responsible for the quasi-delict, their liability is solidary,[8] although the latter can recover from the former whatever sums it pays to respondent.[9]

Petitioner invites attention to Art. 2184 of the Civil Code, and insists that it is only in the instance covered thereby—when the owner of the motor vehicle is riding therein at the time of the mishap that the employer becomes solidarily liable with the driver for any accident resulting from the latter's negligence. That article refers to owners of vehicles who are not included in the terms of Art. 2180 "as owners of an establishment or enterprise."

As alternative remedy, petitioner asks that the damages awarded be reduced. The moral damages of P7,000 is amply justified by the pain and disfigurement suffered by respondent, a pretty girl of sixteen (at the time of the accident), whose left arm had been Scraped bare of flesh from shoulder to elbow because of the accident. As a result, she had to undergo seven operations which cost P3,000—a reasonable enough sum. Attorney's fees of P1,000 is not unconscionable considering that the case was appealed to this Court.

In view of the foregoing, the judgment of the Court of Appeals is hereby affirmed with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

[1] Art. 33 Civil Code

[2] Par. (a), Sec. 1, Rule 107, Rules of Court.

[3] Art. 2177, Civil Code.

[4] Thus, even if the allegations in a complaint are ambiguous or indefinite, but a cause of action can be made therefrom, and recovery can be based on the facts or combination of facts proven, then the motion to dismiss should be denied. (*Pangan vs. Evening News Publishing Co.*, L-13308, Dec. 29, 1960, citing 71 *Corpus Juris Secundum* 932.)

Even granting petitioner's claim that the complaint can be understood for either kind of action, the fact that the allegations for a cause of action under the criminal code are insufficient (although as has been said, these allegations are merely statements of evidentiary matter) does not render the complaint defective inasmuch as the cause of action based on a quasi-delict had been sufficiently alleged. (Sec. 7, Rule 15, Rules of Court.) * * * "Where a complaint presents two apparent theories the theory adopted should be the one which is more clearly authorized or intended by the facts pleaded." (71 *Corpus Juris Secundum* 230-231).

[5] *Hodges vs. Salas*, 63 Phil. 567.

[6] *Bahia vs. Litonjua*, 30 Phil. 624; *Cangco vs. Manila Railroad Co.*, 38 Phil. 768.

[7] The American concept of an employer's liability for his driver's negligence, while based on a different theory—that of "respondent superior"—nevertheless illuminates the point.

While, as stated, the owner of an automobile is not liable for injuries or damages caused by the negligent operation of his automobile while it is being used by an employee for his own business or pleasure, the servant must have abandoned and turned aside completely from the master's business, to engage in some purpose wholly his own, before the master ceases to be liable for his act; it is not every deviation from the direct line of his duties on the part of an employee that constitutes a turning aside from, and an abandonment of, his master's business. A slight deviation by the servant in charge of a motor vehicle, for his own purposes, when he is on business for his master, does not affect the liability of the master for an injury resulting from the negligent operation of the automobile by the servant. (5 Am. Jur. 714-715.)

[8] Art. 2194, Civil Code

[9] Art. 2181, Civil Code

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