

CONNEL BROS. COMPANY (PHIL.), ESTHER P. BOOMER AND MYRNA NICHOL, PLAINTIFFS AND APPELLEES, VS. FRANCISCO ADUNA AND EX-MERALCO EMPLOYEES TRANSPORTATION COMPANY, DEFENDANTS; EX-ME...*G.R. No. L-4057. March 31, 1952*

Ponente: MONTEMAYOR, J.

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This is an appeal by defendant Ex-Meralco Employees Transportation Company from a decision of the Court of First Instance of Rizal, holding the appellant company and its co-defendant Aduna liable for the damages sustained by plaintiffs as a result of the collision between the automobile of one of the plaintiffs and the bus driven by defendant Aduna, condemning said defendants to pay to plaintiff Connel Bros. Company (Phil.), P1,100; plaintiff Esther P. Boomer, 11,681.80; plaintiff Myrna Nichol, P648.46; as fees of plaintiffs' attorney, P500; and to pay costs. The facts are not disputed, the defendant-appellant raising only questions of law, for which reason the appeal has come direct from the lower court.

On September 10, 1949, defendant Francisco Aduna, employed as chauffeur by his co-defendant, Ex-Meralco Employees Transportation Company, while driving his co-defendant's passenger bus on F. B. Harrison Street, Rizal City, in a careless and negligent manner without taking the necessary precautions to avoid accident to persons and damage to property, bumped and hit an oldsmobile car owned by plaintiff Connel Bros. Company (Phil.). As a result of the collision the automobile fell into a canal and was damaged in the sum of P1,000; Esther P. Boomer and Myrna Niehol who were then passengers in the said car sustained physical injuries which necessitated hospitalization and medical care, and they suffered damages in the amounts of P1,681.80 and P648.46, respectively, for hospital and medical expenses and for loss of earning during the period of incapacity to work.

Francisco Aduna was prosecuted and convicted of damage to property and serious physical injuries thru reckless imprudence and had served his prison sentence. At the trial of said criminal case the plaintiffs herein reserved their right to file the corresponding civil suit for damages, and in pursuance of said reservation the present civil action was filed in the lower court to recover damages caused by the criminal negligence committed by defendant Aduna.

The parties herein submitted the case for decision to the lower court upon a stipulation of facts, among which are the conviction of Aduna for damage to property and physical injuries thru reckless imprudence, his being an employee of his co-defendant Ex-Meralco Employees Transportation Company, and that the latter in carrying out its business had been following the same practices and procedure employed by the Manila Electric Company (MERALCO) in exercising due diligence in hiring and supervising its employees, especially the drivers and conductors in the transportation buses; that furthermore, in the particular case of Francisco Aduna, the defendant company had also scrutinized his previous records as a driver, especially during his employment in the Manila

Electric Company for about five (5) years, which was made a prerequisite condition to his employment by his co-defendant; that in addition to the precautionary measures taken for employment of its employees, defendant company has been carefully supervising the work of its employees in the field particularly its drivers and conductors, and that the accident or collision subject-matter of this case is the first collision in which a bus or an employee of the defendant company has been involved. It is also a fact relied upon by the plaintiffs that at the time of the collision, on the back of Francisco Aduna's driver's license marked Exh. C in the criminal case, appear three entries of penalties and warnings.

The theory of the appellant in the lower court was that the present case was brought under the provisions of Arts. 1902 and 1903, of the Civil Code which reads as follows:

"Art. 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

* * * * *

"Art. 1903. The obligation imposed by the next preceding article is enforceable, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

* * * * *

"Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.

* * * * *

"The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage."

That is the reason why defendant Company was careful in inserting in the stipulation of facts the precautionary measures it claims to have taken in selecting its drivers, particularly defendant Francisco Aduna, in order to relieve itself from civil liability. The trial court, however, thought otherwise and ruled that inasmuch as the act of reckless negligence of Aduna causing the damage, was governed by Art. 1092 of the Civil Code, which provides that "civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code," then Arts. 102 and 103 of the Revised Penal Code which provides for the subsidiary liability of the employer for felonies committed by his servants or employees in the discharge of their duties, should be applied. In support of its ruling the trial court cited *Arambulo vs. Manila Electric Co.*, 55 Phil. 75. That was a case where as a result of the negligence and imprudence of a motorman employed by the Manila Electric Co., damage to property and physical injuries were caused for which he was prosecuted, convicted and sentenced, and where on the basis of said conviction and inability of the motorman to pay the civil indemnity, the Electric Company was sued on the basis of its subsidiary liability, and said Electric Company was not allowed to prove and invoke the employment of the diligence of a good father of a family to prevent the accident by carefully selecting its employees, on the ground that said defense is available not in cases covered by the penal code but only in those covered by the articles of the Civil Code such as Arts. 1903, 1902 and 1093 thereof. In the present appeal, counsel for the appellant, Ex-Meralco Employees Transportation Company, reiterates its theory and defense under said Arts. 1902 and 1903, and cites the case of *Barredo vs. Garcia and Almario*, 73 Phil., 607. We believe however that the citation does not support appellants' theory. In that *Barredo* case this Court opined that if the provisions of Art. 1092 of the Civil Code are to be strictly construed in the sense that every civil obligation arising from a crime or misdemeanor is to be governed by the provisions of the penal code, then, inasmuch as almost all acts or omissions causing damage to another as a result of one's fault or negligence are punishable by law, there would be

very little left for the application of article 1902 of the Civil Code governing acts of negligence of purely civil nature (*culpa aquiliana*) under the civil law or tort under the common law. For that reason, this Court in that case tried or sought to enlarge the field of tort or *culpa aquiliana*, believing that the remedy provided by the penal code for the recovery of damages by the party damaged is more burdensome and difficult, particularly in the amount or extent of proof to establish his rights to damages, because to establish the guilt of the offender guilty of negligence, proof beyond reasonable doubt is required, whereas in a purely civil action to recover the same damages under Arts. 1902 and 1903 of the Civil Code, only preponderance of evidence is required. So, the court in that case hold that the offended party seeking damages has the right to choose between a criminal action and a civil suit. In that case of *Barredo vs. Garcia*, the suit was clearly brought under the provisions of the Civil Code. In the decision of the Court of Appeals which was affirmed by this Court it was stated that the liability sought to be imposed upon the employer in that case was not a civil obligation arising from a felony or misdemeanor (crime committed by *Pedro Fontanilla*) but an obligation imposed by Art. 1903 of the Civil Code because of his negligence in the selection and supervision of his servants or employees. In the present case, however, the plaintiffs have chosen to rely upon the provisions of the Penal Code and have based their action on the result of the criminal case against *Francisco Aduna*. In fact, no evidence to show the negligence of *Aduna* was submitted except his conviction in the criminal case. Furthermore, both *Aduna* and his employer, the *Ex-Meralco Employees Transportation Company*, were sued, whereas in the case of *Barredo vs. Garcia*, only *Barredo* was sued. Of course, the present plaintiffs, perhaps through oversight in the prayer of their complaint, asked that both defendants be made to pay the damages sought; and the trial court, also perhaps through inadvertance, condemned both defendants to pay the damages, instead of declaring that defendant *Ex-Meralco Employees Transportation Company* should be held merely subsidiarily liable.

In view of the foregoing, and with the modification that the liability of appellant *Ex-Meralco Employees Transportation Company* is only subsidiary, the decision appealed from is hereby affirmed, with costs against appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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