

**AMADOR D. SANTOS, PETITIONER, VS. DOLORES BANZON
TOLENTINO AND EULOGIO C. TOLENTINO, RESPONDENTS.***G. R. No. L-17394. May 30, 1962*

Ponente: CONCEPCION, J.

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Appeal by certiorari from a decision of the Court of Appeals.

Petitioner Amador D. Santos is the owner of several taxicabs being operated in the City of Manila and suburbs under the name and style of "Santos Taxi" while Dolores Banzon Tolentino, hereafter referred to as Mrs. Tolentino, was at the intersection of Espafia and Dos Castillas Streets, City of Manila, on June 14, 1951, Vicente Duldulao y Dancel, who was driving a "Santos Taxi", bearing Plate.No. 1027 for 1951, backed it without blowing his horns and in such a negligent manner that its rear part bumped Mrs. Tolentino, for which reason she fell down and a rear wheel of the car ran over her, thereby inflicting upon her serious physical injuries. The corresponding information for serious physical injuries through reckless negligence was filed against Duldulao with the Municipal Court of Manila (Criminal Case No. T-40174 thereof), which convicted and sentenced him, accordingly, on November 7, 1951. He appealed to the Court of First Instance of Manila (Criminal Case No. 17273), where he eventually pleaded guilty to the charge and was, on May 26, 1952, sentenced to four (4) months and one (1) day of arresto mayor and to pay the costs.

Meanwhile, in accordance with a reservation made by Mrs. Tolentino in said criminal case, she and her husband, Eulogio C. Tolentino, had, on August 15, 1951, instituted the present civil action against Amador D. Santos and Vicente Duldulao y Dancel, in the Court of First Instance of Manila (Civil Case No. 14461). In the complaint therein, the Tolentinos prayed that Santos and Duldulao be sentenced to pay, jointly and severally, the sum of P10,000 by way of damages and attorney's fees, aside from the costs. In their answer to the complaint, Santos and Duldulao alleged that the accident was due exclusively to the negligence of Mrs. Tolentino. In due course, said court rendered a decision on December 21, 1955, sentencing Santos and Duldulao to pay jointly and severally to Mrs. Tolentino the sums of P2,549.40, as actual damages, and P5,000, as moral damages, in addition to the costs. This decision was, on appeal to the Court of Appeals, taken by Santos and Duldulao, affirmed on July 30, 1960, with the modification that Santos shall pay the aforementioned sums only in the event of inability of Duldulao to satisfy said judgment, the civil liability of the employer under Article 103 of the Revised Penal Code being merely subsidiary to that of the employee who committed the offense giving rise to said liability.

The case is now before the Supreme Court on Appeal by certiorari taken by Amador D. Santos, who maintains that the decision of the Court of Appeals should be modified by eliminating therefrom his subsidiary liability for the payment of moral damages, which, he claims, is not authorized by law. This pretense, however, has already been rejected in Miguel San Jose, et al. vs. Romualdo del Mundo, 91 Phil., 170 (decided on April 28, 1952), in which it was held:

"Es cierto que en Marcelo contra Velasco (11 Jur. Fil., 299), Algarra contra Sandejas (27 Jur. Fil., 320), y

Gutierrez contra Gutierrez (56 Jur. Fil., 193), este Tribunal no adjudicó indemnización por dolor y sufrimiento, sino solamente por danos reales. Pero en Lilius contra Manila Railroad Co. (59 Jur. Fil., 800) y en Castro contra Aero Taxicab Co. (46 Off. Gaz., 2023), este Tribunal concedió indemnización por danos patrimoniales y morales. El Tribunal "Supremo de España, revocando su sentencia de 11 de Marzo de 1899, admite la resarcibilidad de los danos morales. (2 Castan, De recho Civil Espanol, Comun y Foral, 1943 Ed. 466; Sentencia de 14 de Febrero de 1941; 2 Rodriguez Navarro, Doctrina Penal del Tribunal Supremo, 2223; Sentencia de 14 de Noviembre de 1934, 131 Jur. Crjm., 584; 2 Rodriguez Navarro, Doctrina Penal del Tribunal Supremo, 2222.)"

The cases of Cachero vs. Manila Yellow Taxi Co., 101 Phil., 523; Necesito vs. Paras, 104 Phil., 75, Fores vs. Miranda, 105 Phil., 266 and Verzosa vs. Baytan, 107 Phil., 1010, relied upon by the petitioner are not in point for said cases refer to the liability of a carrier for breach of contract with an injured passenger, whereas, the action against petitioner herein is based upon his liability arising from a crime, which is governed by Article 103 of the Revised Penal Code. Petitioner maintains that there is no reason why the carrier, who cannot be held to answer for moral damages for breach of the contract of carriage, should be liable for such damages in actions ex delicto, as in the case at bar. Suffice it to recall, in this connection, what we said in Fores vs. Miranda (supra) with reference to the difference between actions ex contractu and actions quasi ex delicto, which is equally applicable to actions ex delicto:

"Upon the other hand, the advantageous position of a party suing a carrier for a breach of the contract of transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to force majeure (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777). Moreover, the carrier, unlike in suits for quasi delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 17b9, new Civil Code; Cangco vs. Manila Railroad Co., supra; Prado vs. Manila Electric Co., 51 Phil. 900).

"The difference in conditions, defenses and proof, as well as the codal concept of quasi delict as essentially extra-contractual negligence, compel us to differentiate between actions ex contractu, and actions quasi ex delicto and prevent us from viewing the action for a breach of contract as simultaneously embodying an action on tort."

Wherefore, the decision of the Court of Appeals is hereby affirmed, with costs against petitioner-appellant Amador D. Santos. Is so ordered.

Padilla, Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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