

OLEGARIO BRITO SY, PLAINTIFF AND APPELLEE, VS. MALATE TAXICAB & GARAGE, INC., DEFENDANT AND APPELLANT, MALATE TAXICAB & GARAGE, INC., THIRD-PARTY PLAINTIFF AND APPELLANT, VS. JE...

G. R. No. L-8937. November 29, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

On June 26, 1952, at Dewey Boulevard in front of the Selecta Restaurant, Olegario Erito Sy engaged a taxicab bearing plate No. Taxi-1130, owned and operated by the Malate Taxicab and Garage, Inc. and driven by Catalino Ermino, to take him to his place of business at Dencia's Restaurant on the Escolta where he was the general manager. Upon reaching the Rizal Monument, he told the driver to turn to the right, but the latter did not heed him and instead countered that they better pass along Katigbak Drive. At the intersection of Dewey Boulevard and Katigbak Drive, the taxi collided with an army wagon with plate No. TPI-695 driven by Sgt. Jesus Dequito, as a result of which Olegario Brito Sy was jarred, jammed and jolted. He was taken to the Santa Isabel Hospital suffering from bruises and contusions as well as a fractured right leg. Thereafter he was transferred to the Gonzales Orthopedic Clinic and was accordingly operated on. He spent some P2,266.45 for medical bills and hospitalization.

On September 30, 1952, Sy filed action against the Malate Taxicab & Garage, Inc., based upon a contract of carriage, to recover the sums of P7,200 as actual or compensatory damages, P20,000 as moral damages, P15,000 as nominal and exemplary damages, and P3,000 a attorney's fees. On October 2, 1952, a copy of the complaint was served on and received by the defendant, but the latter filed its answer only on October 20, 1952, wherein it alleged that the collision subject of the complaint was not due to the negligence of its driver but to that of Set. Jesus Dequito, the driver of the army wagon; and, by way of counterclaim, sought to recover the sum of P1,000 as damages caused by the alleged malicious and frivolous action filed against it.

The record reveals that upon plaintiff's motion filed on October 23, 1952, the lower court ordered on October 25, 1952 that the answer which was filed by defendant out of time be stricken out, and declared the Malate Taxicab & Garage, Inc. in default. Thereafter, on October 30, 1952, plaintiff presented his evidence, and on November 20, 1952 judgment was rendered awarding plaintiff the sum of P14,000 as actual, compensatory, moral, nominal and exemplary damages including attorney's fees and costs, with interest at the legal rate from the filing of the action. Defendant then filed a motion on December 17, 1952, for relief from the order of default and for new trial, which was granted. Hence, plaintiff filed his reply to defendant's answer and counterclaim, and by leave of court, the latter filed on February 24, 1953 a third-party complaint against Sgt. Jesus Dequito alleging that the cause of the collision between the taxicab and the army wagon was the negligence of the army sergeant, and praying that whatever amount the court may assess against it in the action filed by plaintiff, be paid to said third-party plaintiff, plus an additional amount of P1,000 representing attorney's fees. It appears, however, that the summons and copy of the third-party complaint were never served upon third-party defendant Dequito in view of his continued

assignment from place to place in connection with his army duties, and for this reason the main case was set for trial on May 10, 1953, obviously for the sole purpose of disposing of the issue arising from plaintiff's complaint. On the day of the trial, defendant failed to appear, whereupon plaintiff presented his evidence, and judgment was rendered against the defendant in the total sum of P4,200 representing actual, compensatory and moral damages, as well as attorney's fees, with interest at the legal rate from the filing of the action, plus costs of suit. Against said judgment defendant appealed to the Court of Appeals and assigned in its brief two errors of the lower court, namely:

- The trial court erred in not finding that the third-party complaint involves a prejudicial question, and therefore, the main complaint cannot be decided until the third-party complaint is decided.
- The trial court erred in not deciding or making an express finding as to whether the defendant-appellant Malate Taxicab & Garage, Inc. was responsible for the collision, and hence, civilly responsible to the plaintiff-appellee."

Finding the quoted assignment of errors as involving a purely question of law, the Court of Appeals, by virtue of the provisions of section 17, paragraph 6 of the Judiciary Act of 1948, as amended, certified the case to this Court for adjudication, in its Resolution of February 7, 1955.

We find no merit in the first assignment of error that the third-party complaint is a pre-judicial question. As enunciated by this Court in *Berbari vs. Concepcion*, 40 Phil. 887, "Pre-judicial question is understood in law to be that which precedes the criminal action, or that which requires a decision before final judgment is rendered in the principal action with which said question is closely connected. Not all previous questions are pre-judicial, although all pre-judicial questions are necessarily previous." In the present case, the third-party complaint is not a pre-judicial question, as the issue in the main action is not entirely dependent upon those in the third-party complaint; on the contrary, it is the third-party complaint that is dependent upon the main case at least in the amount of damages which defendant-appellant seeks to be reimbursed in its third-party complaint. Furthermore, the complaint is based on a contractual obligation of transportation of passenger which defendant-appellant failed to carry out, and the action is entirely different and independent from that in the third-party complaint which is based on alleged tortious act committed by the third-party defendant Sgt. Dequito. The main case, therefore, is entirely severable and may be litigated independently. Moreover, whatever the outcome of the third-party complaint might be would not in any way affect or alter the contractual liability of the appellant to plaintiff. If the collision was due to the negligence of the third-party defendant, as alleged, then defendant-appellant may file a separate civil action for damages based on tort ex-delicto or upon quasi-delict, as the case may be.

Coming to the second assignment of error that the lower court erred in not making an express finding as to whether defendant-appellant was responsible for the collision, we find the same to be unjustified. The pertinent provisions of the new Civil Code under the heading Common Carriers, are the following:

"ART. 1783. Common carriers, from the nature of their business and for reasons of. public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

"ART. 1755. A common carrier is bound to carry the passengers to safety as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

"ART. 1756, In case of death of or injuries to passengers, common carriers are presumed to have been at fault

or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755," (*Italics supplied.*)

Evidently, under these provisions of law, the court need not make an express finding of fault or negligence on the part of the defendant-appellant in order to hold it responsible to pay the damages sought for by the plaintiff, for the action initiated therefor is based on a contract of carriage and not on tort. When plaintiff rode on defendant-appellant's taxicab, the latter assumed the express obligation to transport him to his destination safely, and to observe extraordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier (Article 1756, *supra*). This is an exception to the general rule that negligence must be proved, and it was therefore incumbent upon the carrier to prove that it has exercised extraordinary diligence as prescribed in Articles 1733 and 1755 of the new Civil Code. It is noteworthy, however, that at the hearing in the lower court defendant-appellant failed to appear and has not presented any evidence at all to overcome and overwhelm the presumption of negligence imposed upon it by law; hence, there was no need for the lower court to make an express finding thereon in view of the provisions of the aforementioned Article 1756 of the new Civil Code.

Wherefore, the decision of the lower court is hereby affirmed with cost against the appellant.

Paras, C. J., Bengzon, Montsmayor, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

CONCURRING

REYES, J. B. L., J. :

I concur for the additional reason that the concurrent negligence of a third person will not exempt the appellant from responsibility; in other words, if the driver of the taxicab was negligent and thereby caused the collision, the fact that another driver's negligence also contributed thereto will not exempt the taxicab company. Hence, the negligence of the other driver is not a prejudicial question to the present action.

Padilla, J., concur.

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