

**EMERENCIANA M. VDA. DE MEDINA, ET AL., PLAINTIFFS AND
APPELLEES VS. GUILLERMO CRESENCIA, ET AL., DEFENDANTS.
GUILLERMO CRESENCIA, APPELLANT.**

G.R. No. L-8194. July 11, 1956

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

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/60261e5139e6/>

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

Appeal by defendant Guillermo Cresencia from the judgment of the Court of First Instance of Manila in its civil case No. 19890, sentencing appellant, jointly and severally with his co-defendant Brigido Avorque, to pay plaintiffs Emerencia M. Vda. de Medina and her minor children damages in the total amount of P56,000, P5,000 attorneys' fees, and costs.

It appears that on May 31, 1953, passenger jeepney bearing plate No. TPU-2232 (Manila), driven by Brigido Avorque, smashed into a Meralco post on Azcarraga Street, resulting in the death of Vicente Medina, one of its passengers. A criminal case for homicide through reckless imprudence was filed against Avorque (criminal case No. 22775 of the Court of First Instance of Manila), to which lie pleaded guilty on September 9, 1953. The heirs of the deceased, however, reserved their right to file a separate action for damages, and on June 16, 1953, brought suit against the driver Brigido Avorque and appellant Guillermo Cresencia, the registered owner and operator of the jeepney in question. Defendant Brigido Avorque did not file any answer; while defendant Cresencia answered, disclaiming liability on the ground that he had sold the jeepney in question on October 14, 1950 to one Maria A. Cudiamat; that the jeepney had been repeatedly sold by one buyer after another, until the vehicle was purchased on January 29, 1953 by Rosario Avorque, the absolute owner thereof at the time of the accident. In view of Cresencia's answer, plaintiffs filed leave, and was allowed, to amend their complaint making Rosario Avorque a co-defendant; and the latter, by way of answer, admitted having purchased the aforesaid jeepney on May 31, 1953, but alleged in defense that she was never the public utility operator thereof. The case then proceeded to trial, during which, after the plaintiffs had presented their evidence, defendants Guillermo Cresencia and Rosario Avorque made manifestations admitting that the former was still the registered operator of the jeepney in question in the records of the Motor Vehicles Office and the Public Service Commission, while the latter was the owner thereof at the time of the accident; and submitted the case for the decision on the question of who, as between the two, should be held liable to plaintiffs for damages. The lower court, by Judge Jose Zulueta, held that as far as the public is concerned, defendant Cresencia, in the eyes of the law, continued to be the legal owner of the jeepney in question; and rendered judgment against him, jointly and severally with the driver Brigido Avorque, for P6,000 compensatory damages, P30,000 moral damages, P10,000 exemplary damages, P10,000 nominal damages, P5,000 attorneys fees, and costs, while defendant Rosario Avorque was absolved from liability. From this judgment, defendant Cresencia appealed.

We have already held in the case of *Montoya vs. Ignacio*, 94 Phil., 182 (December 29, 1953), which the court below cited, that the law (section 20 [g], C. A. No. 146 as amended) requires the approval of the Public Service Commission in order that a franchise, or any privilege pertaining thereto, may be sold or leased without infringing

the certificate issued to the grantee; and that if property covered by the franchise is transferred or leased without this requisite approval, the transfer is not binding against the public or the Service Commission; and in contemplation of law, the grantee of record continues to be responsible under the franchise in relation to the Commission and to the public. There we gave the reason for this rule to be as follows:

"* * * Since a franchise is personal in nature any transfer or lease thereof should be notified to the Public Service Commission so that the latter may take proper safeguards to protect the interest of the public. In fact, the law requires that, before the approval is granted, there should be a public hearing, with notice to all interested parties, in order that the Commission may determine if there are good and reasonable grounds justifying the transfer or lease of the property covered by the franchise, or if the sale or lease is detrimental to public interest. * * *"

The above ruling was later reiterated in the cases of *Timbol vs. Osias*, L-7547, April 30, 1955 and *Roque vs. Malibay Transit Inc.*, L-8561, November 18, 1955.

As the sale of the jeepney here in question was admittedly without the approval of the Public Service Commission, appellant herein, Guillermo Cresencia, who is the registered owner and operator thereof, continued to be liable to the Commission and the public for the consequences incident to its operation. Wherefore, the lower court did not err in holding him, and not the buyer Rosario Avorque, responsible for the damages sustained by plaintiff by reason of the death of Vicente Medina resulting from the reckless negligence of the jeepney's driver, Brigido Avorque.

Appellant also argues that the basis of plaintiffs' action being the employer's subsidiary liability under the Revised Penal Code for damages arising from his, employee's criminal acts, it is defendant Rosario Avorque who should answer subsidiarily for the damages sustained by plaintiffs, since she admits that she, and not appellant, is the employer of the negligent driver Brigido Avorque. The argument is untenable/because plaintiffs' action for damages is independent of the criminal case filed against Brigido Avorque, and based, not on the employer's subsidiary liability under the Revised Penal Code, but on a breach of the carrier's contractual obligation to carry his passengers safely to their destination (*culpa contractual*). And it is also for this reason that there is no need of first proving the insolvency of the driver Brigido Avorque before damages can be recovered from the carrier, for in *culpa contractual*, the liability of the carrier is not merely subsidiary or secondary, but direct and immediate (Articles 1755, 1756, and 1759, New Civil Code).

The propriety of the damages awarded has not been questioned. Nevertheless, it is patent upon the record that the award of P10,000 by way of nominal damages is untenable as a matter of law, since nominal damages can not co-exist with compensatory damages. The purpose of nominal damages is to vindicate or recognize a right that has been violated, in order to preclude further contest thereon; "and not for the purpose of indemnifying the plaintiff for any loss suffered by him" (Articles 2221, 2223, new Civil Code.) Since the court below has already awarded compensatory and exemplary damages that are in themselves a judicial recognition that plaintiff's right was violated, the award of nominal damages is unnecessary and improper." Anyway, ten thousand pesos can not, in common sense, be deemed "nominal".

With the modification that the award of P10,000 nominal damages" be eliminated, the decision appealed from is affirmed. Costs against appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.