

**RAFAELA CAMPO, ERNESTO GILUANO, REMEDIOS GILUANO,
ROSALINA GILUANO, AND FELIX GILUANO, PLAINTIFFS AND
APPELLEES VS. JUAN CAMAROTE AND GREGORIO GEMILGA,
DEFENDANTS. JUAN CAMAROTE...**

G.R. No. L-9147. November 29, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Juan Camarote was in 1953 the registered owner of a jeep with plate license DV-807 while Gregorio Gemilga, a duly licensed (professional) driver with license No. 77675, was his driver. On August 30, 1953, as Gemilga drove the jeep along the road in Davao, it bumped against the rear of another which two passengers had just boarded. As a result of the impact Felix Giluano suffered many physical injuries and he later died. So on October 26 a criminal information was filed against Gemilga. The trial was scheduled for December 11, 1953, but on December 5, 1953 Gemilga pleaded guilty to the information and was sentenced to imprisonment and indemnity of P3,000." No execution of the indemnity was asked for and none was issued.

On October 19, 1953, before Gemilga entered his plea of guilty the present action was instituted in the Court of First Instance of Davao by the heirs of the deceased Giluano against Juan Camarote, the owner of the jeep, and Gemilga, the driver. The case was submitted for judgment upon a stipulation of facts, the most important of which are set forth in the above statement. On the basis of the stipulation, judgment was entered for plaintiff against defendants sentencing them to pay plaintiff P6,000 as damages and P500 as attorney's fee. Against this judgment this appeal was presented.

The principal contentions of the defendants Juan Camarote are: (1) that his liability as owner of the jeep is only subsidiary, and (2) that if the action is against him for his negligence, he is not guilty of such negligence but exercised the diligence of a good father of a family because he was not in the jeep at the time of the accident and the driver of the jeep whom he employed is a competent driver. There is no question that the basis of the action is the supposed negligence or lack of good diligence on the part of the owner of the vehicle. Thus the complaint alleges—

"* * * and neither the operator (owner) observed the due care and diligence of a good father of a family in the employment of the driver Gregorio Gamilga * * *." (Paragraph 5.)

The law which defines the scope of the liability of a car owner in relation to accidents and injuries caused by the vehicle driven by another is Article 2180 of the Civil Code which provides:

"Art. 2180.—The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

* * * * *

Employers shall be liable for the damages caused by their employees and household helpers acting within the

scope of their assigned tasks, even though the former are not engaged in any business or industry.

* * * * *

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

Under the civil code of Spain the provisions governing the case were articles 1903 to 1910.

Article 1903 of said code provides as follows:

"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.

The father, or in case of his death, or incapacity, the mother, is liable for any damages caused by the minor children who live with them.

Guardians are liable for damages done .by minors or incapacitated persons subject to their authority and living with them.

Owners or directors of any establishment or business are, in the same way, 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 State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions or the next preceding article shall be applicable.

Finally, teachers or directors of arts and trades are liable for any damages caused, by their pupils or apprentices while they are under their custody.

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

A comparison between the above Article and Article 2180 of the Civil Code of the Philippines shows that paragraph 15 of the latter is not contained in the former. This paragraph reads as follows:

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

Rulings under the old provision (Article 1908) are to the effect that the owner of a vehicle will not be liable if at the time of the accident causing injury to a third person the owner of the vehicle is not present therein, because he does not fall within the list of persons enumerated in Article 1903 of the Civil Code (Johnson vs. David, 5 Phil. 663; Chapman vs. Underwood, 27 Phil. 374; Marquez vs. Castillo, 40 Off. Gaz. No. 5, 204). Under the new Civil Code, however, the owner of the vehicle is included among the persons who may respond for the acts of their employees who cause damage to third persons in the course of their employment. By reason of this newly inserted provision the owner of a jeep driven by another becomes responsible for the driver's negligence under the terms and circumstances specified in the last paragraph of article 2180. In accordance with this paragraph the owner of the vehicle is responsible unless he proves that he exercised the diligence of a good father of a family to prevent the damage. But in the case at bar, Camarote, the jeepney-owner, was not in the jeep; and the only manner in which he could have avoided damage to third persons would have been by the exercise by him of the diligence of a good father of a family in the choice or selection of his driver. Did he satisfy the requirement of the law in this case?

Defendant Juan Camarote argues that the mere fact that the driver was a professional driver is a sufficient exercise of the diligence required of a good father of a family, which would exempt him from responsibility. We think that this is a mistaken view of the law, taking into account the fact, of which we take judicial notice, that licenses are easy to obtain and no strict examination is required before professional driver's licenses are given, and that the holding of a driver's license is no guarantee or assurance of the carefulness of the holder of the license. In order that the defendant may be considered as having exercised all diligence of a good father of a family, he should not have been satisfied with the mere possession of a professional driver's license; he should have carefully examined the applicant for employment as to his qualifications, his experience and record of service. Defendant-appellant did not take these steps, which are considered essential, and we must hold that he has failed to exercise all due diligence required of a good father of a family in the choice of selection of his driver.

The reason for the law is obvious. It is indeed difficult for any person injured by the carelessness of a driver to prove the negligence or lack of due diligence of the owner of the vehicle in the choice of the driver. Were " we to require the injured party to prove the owner's lack of diligence, the right will in many cases prove illusory, as seldom does a person in the community, especially in the cities, have the opportunity to observe the conduct of all possible car owners therein. So the law imposes the burden of proof of innocence on the vehicle owner. If the driver is negligent and causes damage, the law presumes that the owner was negligent and imposes upon him the burden of proving the contrary.

Finding that the conclusion of the trial judge as to defendant-appellant's responsibility is correct, we hereby affirm the decision, with costs against defendant-appellant.

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

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