

PEDRO D. DIOQUINO, PLAINTIFF-APPELLEE, VS. FEDERICO LAUREANO AIDA DE LAUREANO AND JUANITO LAUREANO, DEFENDANTS-APPELLANTS.*G.R. No. L-25906. May 28, 1970*

Ponente: FERNANDO, J.

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The present lawsuit had its origin in a relationship, if it could be called such, the use of a car owned by plaintiff Pedro D. Dioquino by defendant Federico Laureano, clearly of a character casual and temporary but unfortunately marred by an occurrence resulting in its windshield being damaged. A stone thrown by a boy who, with his other companions, was thus engaged in what undoubtedly for them must have been mistakenly thought to be a none-too-harmful prank did not miss its mark. Plaintiff would hold defendant Federico Laureano accountable for the loss thus sustained, including in the action filed the wife, Aida de Laureano, and the father, Juanito Laureano. Plaintiff prevailed in the lower court, the judgment however going only against the principal defendant, his spouse and his father being absolved of any responsibility. Nonetheless, all three of them appealed directly to us, raising two questions of law, the first being the failure of the lower court to dismiss such a suit as no liability could have been incurred as a result of a fortuitous event and the other being its failure to award damages against plaintiff for the unwarranted inclusion of the wife and the father in this litigation. We agree that the lower court ought to have dismissed the suit, but it does not follow that thereby damages for the inclusion of the above two other parties in the complaint should have been awarded appellants.

The facts as found by the lower court follow: "Attorney. Pedro Dioquino, a practising lawyer of Masbate, is the owner of a car. On March 31, 1964, he went to the office of the MVO, Masbate, to register the same. He met the defendant Federico Laureano, a patrol officer of said MVO office, who was waiting for a jeepney to take him to the office of the Provincial Commander, PC, Masbate. Attorney Dioquino requested the defendant Federico Laureano to introduce him to one of the clerks in the MVO Office, who could facilitate the registration of his car and the request was graciously attended to. Defendant Laureano rode on the car of Atty. Dioquino on his way to the P.C. Barracks at Masbate. While about to reach their destination, the car driven by plaintiff's driver and with defendant Federico Laureano as the sole passenger, was stoned by some 'mischievous boys,' and its windshield was broken. Defendant Federico Laureano chased the boys and he was able to catch one of them. The boy was taken to Atty. Dioquino [and] admitted having thrown the stone that broke the car's windshield. The plaintiff and the defendant Federico Laureano with the boy returned to the P.C. barracks and the father of the boy was called, but no satisfactory arrangements [were] made about the damage to the windshield." [1]

It was likewise noted in the decision now on appeal: "The defendant Federico Laureano refused to file any charges against the boy and his parents because he thought that the stone-throwing was merely accidental and that it was due to force Majeure. So he did not want to take any action and after delaying the settlement, after perhaps consulting a lawyer, the defendant Federico Laureano refused to pay the windshield himself and challenged that the case be brought to court for judicial adjudication. There is no question that the plaintiff tried to convince the

defendant Federico Laureano just to pay the value of the windshield and he even came to the extent of asking the wife to convince her husband to settle the matter amicably but the defendant Federico Laureano refused to make any settlement, clinging [to] the belief that he could not be held liable because a minor child threw a stone accidentally on the windshield and therefore, the same was due to force majeure.”[2]

1. The law being what it is, such a belief on the part of defendant Federico Laureano was justified. The express language of Art. 1174 of the present Civil Code which is a restatement of Art. 1105 of the Old Civil Code, except for the addition of the nature of an obligation requiring the assumption of risk, compels such a conclusion. It reads thus: "Except in cases expressly specified by the law, or when is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable." Even under the old Civil Code then, as stressed by us in the first decision dating back to 1908, in an opinion by Justice Mapa, the rule was well-settled that in the absence of a legal provision or an express covenant, "no one should be held to account for fortuitous cases." [3] Its basis, as Justice Moreland stressed, is the Roman law principle *major casus est, cui humana infirmitas resistere non potest*. [4] Authorities of repute are in agreement, more specifically concerning an obligation arising from contract "that some extraordinary circumstance independent of the will of the obligor, or of his employees, is an essential element of a *caso fortuito*. [5] If it could be shown that such indeed was the case, liability is ruled out. There is no requirement of "diligence beyond what human care and foresight can provide." [6]

The error committed by the lower court in holding defendant Federico Laureano liable appears to be thus obvious. Its own findings of fact repel the notion that he should be made to respond in damages to the plaintiff for the broken windshield. What happened was clearly unforeseen. It was a fortuitous event resulting in a loss which must be borne by the owner of the car. An element of reasonableness in the law would be manifestly lacking if, on the circumstances as thus disclosed, legal responsibility, could be imputed to an individual in the situation of defendant Laureano. Art. 1174 of the Civil Code guards against the possibility of its being visited with such a reproach. Unfortunately, the lower court was of a different mind and thus failed to heed its command.

It was misled, apparently, by the inclusion of the exemption from the operation of such a provision of a party assuming the risk, considering the nature of the obligation undertaken. A more careful analysis would have led the lower court to a different and correct interpretation. The very word-ing of the law dispels any doubt that what is therein contemplated is the resulting liability even if caused by a fortuitous event where the party charged maybe considered as having assumed the risk incident in the nature of the obligation to be performed. It would be an affront, not only to the logic but to the realities of the situation, if in the light of what transpired, as found by the lower court, defendant Federico Laureano could be held as bound to assume a risk of this nature. There was no such obligation on his part.

Reference to the leading case of *Republic v. Luzon Stevedoring Corp.* [7] will illustrate when the nature of the obligation is such that the risk could be considered as having been assumed. As noted in the opinion of Justice J. B. L. Reyes, speaking for the Court: "The appellant strongly stresses the precautions taken by it on the day in question: that it assigned two of its most powerful tugboats to tow down river its barge L-1892; that it assigned to the task the more competent and experienced among its patrons, had the towlines, engines and equipment double-checked and inspected; that it instructed its patrons to take extra precautions; and concludes that it had done all it was called to do, and that the accident, therefore, should be held due to force majeure or fortuitous event." Its next paragraph explained clearly why the defense of *caso fortuito* or force majeure does not lie. Thus: "These very precautions, however, completely destroy the appellant's defense. For *caso fortuito* or force majeure (which in law are identical in so far as they exempt an obligor from liability) by definition are extraordinary

events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, were inevitable' (Art. 1174, Civ. Code of the Philippines). It is, therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed, but it must be one impossible to foresee or to avoid. The mere difficulty to foresee the happening is not impossibility to foresee the same; 'un hecho no constituye caso fortuito por la sola circunstancia de que su existencia haga mas dificil o mas onerosa, la accion, diligente del presente ofensor' (Peirano Facio, Responsabilidad Extra-contractual, p. 465; Mazeaud, Traite de la Responsabilite Civile, Vol. 2, sec. 1569). The very measures adopted by appellant prove that the possibility of danger was not only foreseeable, but actually foreseen, and was not caso fortuito."

In that case then, the risk was quite evident and the nature of the obligation such that a party could rightfully be deemed as having assumed it. It is not so in the case before us. It is anything but that. If the lower court, therefore, were duly mind-ful of what this particular legal provision contemplates, it could not have reached the conclusion that defendant Federico Laureano could be held liable. To repeat, that was clear error on its part.

2. Appellants do not stop there. It does not suffice for them that defendant Federico Laureano would be freed from liability. They would go farther. They would take plaintiff to task for his complaint having joined the wife, Aida de Laureano, and the father, Juanita Laureano. They were far from satisfied with the lower court's absolving these two from any financial responsibility. Appellants would have plaintiff pay damages for their inclusion in this litigation. We are not disposed to view the matter thus.

It is to be admitted, of course, that plaintiff, who is a member of the bar, ought to have exercised greater care in selecting the parties against whom he would proceed. It may be said that his view of the law that would consider defendant Federico Laureano liable on the facts as thus disclosed, while erroneous, is not bereft of plausibility. Even the lower court, mistakenly of course, entertained a similar view. For plaintiff, however, to have included the wife and the father would seem to indicate that his understanding of the law is not all that it ought to have been.

Plaintiff apparently was not entirely unaware that their inclusion in the suit filed by him was characterized by unorthodoxy. He did attempt to lend some color of justification by explicitly setting forth that the father was joined as party defendant in the case as he was the administrator of the inheritance of an undivided property to which defendant Federico Laureano could lay claim and that the wife was likewise proceeded against because the conjugal partnership would be made to respond for whatever liability would be adjudicated against the husband.

It cannot be said that such an attempt at justification is impressed with a high persuasive quality. Far from it. Nonetheless, mistaken as plaintiff apparently was, it cannot be concluded that he was prompted solely by the desire to inflict needless and unjustified vexation on them. Considering the equities of the situation, plaintiff having suffered a pecuniary loss which, while resulting from a fortuitous event, perhaps would not have occurred at all had not defendant Federico Laureano borrowed his car, we feel that he is not to be penalized further by his mistaken view of the law in including them in his complaint. Well-worth paraphrasing is the thought expressed in a United States Supreme Court decision as to the existence of an abiding and fundamental principle that the expenses and annoyance of litigation form part of the social burden of living in a society which seeks to attain social control through law.[8]

WHEREFORE, the decision of the lower court of November 2, 1965 insofar as it orders defendant Federico Laureano to pay plaintiff the amount of P3,000.00 as damages plus the payment of costs, is hereby reversed. It is affirmed insofar as it dismissed the case against the other two defendants, Juanita Laureano and Aida de Laureano, and declared that no moral damages should be awarded the parties. Without pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Teehankee, Barredo, and Villamor, JJ., concur.

[1] Decision, Record on Appeal, pp. 29-30.

[2] Ibid, pp. 36-37.

[3] Crame Sy Panco v. Gonzaga, 10 Phil. 646, 648. Cf. Chan Keep v. Chan Gioco, 14 Phil. 5 (1909) and Novo & Co. v. Ainsworth, 26 Phil. 380 (1913).

[4] Roman Catholic Bishop of Jaro v. De la Peña, 26 Phil. 144, 146 (1913).

[5] Lasam v. Smith, 45 Phil. 657, 661- 662 (1924). Cf. Yap Kim Chuan v. Tiaoqui, 31 Phil. 433 (1915); University of Santo Tomas v. Descals, 38 Phil. 267 (1918); Lizares v. Hernaez, 40 Phil. 981 (1920); Garcia v. Escudero, 43 Phil. 437 (1922); Milian v. Rio y Olabarrieta, 45 Phil. 718 (1924); Obejera v. Iga Sy, 76 Phil. 580 (1946).

[6] Gillaco v. Manila Railroad Co., 97 Phil. 884 (1955).

[7] G.R. No. L-21749, Sept. 29, 1967, 21 SCRA 279.

[8] Cf. Petroleum Exploration v. Public Service Commission, 304 US 209 (1938).

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