

EDUARDO B. VILORIA, REPRESENTED BY HIS SON, MICHAEL JAY S. VILORIA, PLAINTIFF-APPELLANT, VS. ALVIN JIMENEZ AND ROLANDO JIMENEZ, SR., DEFENDANTS-APPELLANTS.

Ponente: BORJA, J.

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BORJA, J.:

APPEAL from the March 14, 2010 Decision[1] of the Regional Trial Court (Branch 5), 12[th] Judicial Region, Iligan City, dismissing Civil Case No. 6888, an action for “Damages”.

The Facts of the Case

On May 2, 2006, plaintiff Eduardo Viloría, represented by his son, Michael Jay Viloría, filed the complaint[2] in the aforementioned case against defendants Alvin Jimenez and Rolando Jimenez Sr., alleging as follows –

Sometime in August 2003, Alvin Jimenez approached Michael Jay Viloría to borrow a Mitsubishi Micro-bus L-300 owned by his father, plaintiff Eduardo Viloría. Alvin planned to use the van on September 15, 2003 and proposed to rent it for P1,000.00 for one day use. Michael, acceding “out of pity”, turned over the van to Michael Jay on September 14, 2003 at a car shop. Alvin paid only P700.00. On the same day, at around 9:00 o’clock in the evening, the van, driven by Alvin, figured in an accident when it bumped a Yamaha Motorcycle bearing plate number KJ-8187 driven by Rafael Islet, with passengers Allan Saring and Ramel Sanico, at a curve of the Barinaut Highway, Iligan City. Allan and Ramel sustained physical injuries; the van sustained serious damage. The investigation by SPO1 Roosevelt M. Cabarteja disclosed that Alvin was under the influence of intoxicating liquor at the time of the accident.

As a consequence, Allan and Ramel were both confined and treated at the Mindanao Sanitarium Hospital; Eduardo Villoria, the plaintiff, paid the hospital bills in the amount of P3,146.00. The van, which fell off a cliff, was extricated by two cranes from the Celica Auto-repair shop whose services Eduardo engaged and whom he paid P3,000.00 as towing fee. Damage to the van, which was parked at the Celica Auto-repair shop, was estimated at P296,854.00. The plaintiff asked for moral damages in the amount of P100,000.00, attorney’s fees in the amount of P30,000.00, appearance fees at P1,500.00 per appearance, and litigation expenses.

Michael clarified that defendant Rolando Jimenez, Sr. was impleaded as the father of “Alvin who was then nineteen years old at the time of the mishap and was still living with his parents and dependent for support and subsistence.”

In their answer,[3] the defendants countered that –

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3. They qualify the allegations in paragraph 4 because as of September 2003, defendant Alvin Jimenez was of legal age and was living separately and independently from his parents; he was not dependent upon them for support, whatsoever. They deny the allegations in paragraph 5 for want of basis in fact and in law;

4. They deny the allegations in paragraphs 6 and 7, the truth being, that plaintiff's van was a vehicle for hire, operated as "colorum"[4]; the transaction entered into between him and defendant Alvin was personal... and for a fixed rental of Php1,000.00 exclusive of fuel and driver, while co-defendant Rolando Jimenez, Sr. had no participation thereon whatsoever;

5. They qualify the allegations in paragraph 7 in that on September 15, 2003, defendant Alvin hired said van for Php1,000.00 and transacted alone with plaintiff Michael at the car shop near Philam Building. After the consummation of the transaction, plaintiff invited Alvin to a drinking spree at Darren's Bar, along Permites Road, Barangay San Miguel, Iligan City. At first, Alvin declined the invitation but Michael insisted and would not allow him to leave with the van;

6. They qualify the allegations in paragraph 8 in that while Alvin was driving the van by himself, on his way to Barra, Opol, Misamis Oriental and while following the national highway, he was caught by surprise by the presence of a motorcycle ahead without lights on it. However, by that time the van was already very close to the motorcycle that hitting it was inevitable. He instinctively swerved the van to the left but due to its proximity to the motorcycle, its right side mirror hit the motorcycle, while he lost control of the wheel and the van crossed the road and slammed into the canal being dredged by the on-going widening project and thereafter it fell down. Allan Saring's affidavit was maliciously obtained;

7. xxx [P]laintiff Michael is equally at fault and is in pari delicto;

8. They admit with qualification, the allegations in paragraph 11. Plaintiff was already paid with his insurance claims to, STANDARD INSURANCE COMPANY and the proceeds of such claims were already received by him;

9. They deny the allegations in paragraphs 12 and 13, because, regardless of the extent of the damage, plaintiff was already fully paid by his insurer, STANDARD INSURANCE COMPANY. To allow him to recover twice would be unjust enrichment. However, plaintiff undervalued his van to save from paying the right insurance premium. But in turn he was able to recover less than its actual insurance value. Besides, the plaintiff was operating the van FOR HIRE without authority from the LTFRB and without disclosing such fact to his insurer. As a consequence thereof, the proceeds of his insurance claims were proportionately reduced, that the plaintiff now intends to recover more from Alvin. Unfortunately, Alvin has no source of income, so co-defendant Rolando who is a total stranger is being unjustly and maliciously implicated as party defendant;

10. They deny the allegations in paragraph 14, xxx, plaintiff was acting in bad faith from the very beginning – he was operating the van for hire (as colorum);

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13. They deny the allegations in paragraphs 19 and 20 because as already stated, defendant Alvin already paid the hospital bills and medicines for Saring and company. Besides, plaintiff was already paid by his insurer, by concealing the true facts and circumstances involving his claims, it is hereby suggested that the STANDARD INSURANCE COMPANY be summoned as well to enlighten the court.

DEFENSES AND OR MOTION TO DISMISS

14. Michael hereby re-pleads the foregoing allegations. In addition thereto, they believe the complaint should be dismissed because:

- the complaint states no cause of action, as plaintiff was illegally operating his L-300 van for hire without authority;
- co-defendant Rolando is a complete stranger, he had no participation in the transaction entered into by and between Michael and Alvin; he was not summoned to appear nor was he given the opportunity to participate in the barangay conciliation proceeding;

- Michael was already paid by the insurer, but despite thereof, he and the repair shop operator did not complete the repair of the van, apparently with intention of unjustly enriching himself;
- There is no civil liability because the incident was “accidental” and Alvin was not convicted of a crime, in fact the claims had already been settled;
- Plaintiff did not come to court with clean hands, as he is in pari delicto with Alvin.[5]

After the pre-trial on September 14, 2006,[6] trial ensued.

On May 14, 2010, the trial court rendered its decision decreeing as follows:

WHEREFORE, premises considered, the Court finds that the plaintiff failed to prove [his] case against the defendants due to lack of evidence. Likewise, herein defendants failed to prove their counterclaim. This case is dismissed.[7]

The trial court found that -

The plaintiff failed to prove that defendant’s driving under the influence of liquor was the proximate cause of the mishap. xxx xxx xxx. No iota of evidence whatsoever was presented by the plaintiff to establish the act or omission constituting the fault or negligence of the defendant. There is no proof that Alvin drove the van in a reckless and wanton manner. In fact, this was not even alleged in the complaint. There is no allegation and no proof that the defendant’s driving under the influence of liquor unbroken by any efficient intervening cause, produced the result complained of and without which, it would not have occurred.

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Further, other than Allan Saring, all of plaintiff’s witnesses were not presented as eyewitness to the vehicular mishap. Allan on the other hand, only said that his companion Malot was hit by the side mirror, then the van must be beside them, but if the van bumped the motorcycle from behind, then it is unlikely for Malot to be struck by the side mirror. The plaintiff was not meticulous in their presentation of evidence – they failed to explain why the point of impact, indicated by the debris on the police sketch, appears to be in the middle or fast lane when a motorcycle, being the slower vehicle, is supposed to travel on the outside or slow lane. If Alvin was indeed at fault, why did the owner and riders of the motorcycle refuse to file charges against him? The truth is that there is no evidence adduced from which the court can draw conclusion for the purpose of determining the party at fault in this case.

It is a basic rule in evidence that each party must prove his affirmative allegations. The burden of proof lies with the party who asserts the affirmative of an issue.

As a final word, the extract of police blotter stated that the motorcycle was accidentally bumped and hit by a tailing L-300 van. Also, paragraph 8 of the Complaint makes the same allegation that it was accidental. The word accidental means it was fortuitous, strongly suggesting chance and the total absence of cause.[8]

Michael moved for the reconsideration[9] of the trial court’s decision. But the trial court denied the motion on June 25, 2010.[10] Hence, this appeal, Michael assigning the following errors:

1. THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT PLAINTIFF FAILED TO PROVE THEIR CASE AGAINST DEFENDANTS DUE TO LACK OF EVIDENCE;
2. THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THE PLAINTIFF IS BARRED BY ESTOPPEL AND BOUND BY THE ACTS OF HIS SON, MICHAEL VILORIA, WHO AT THE TIME ACTED AND REPRESENTED HIMSELF AS BEING DULY AUTHORIZED BY HIS FATHER, HENCE AN AGENT OF HIS FATHER.[11]

The Ruling of this Court

Appellant essentially argues that the trial court erred in dismissing the case for lack of merit when, he insists, he had established the elements of quasi-delict. Viz -

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3. the case at bar is clearly within the coverage of Article 2176, in relation to Article 2180 of the Civil Code provisions on quasi-delicts as all the elements thereof are present, to wit: (1) damages suffered by the plaintiff, (2) fault or negligence of the defendant or some other person for whose act he must respond, and (3) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by plaintiff;

4. As to element number one, the fact that the subject motor vehicle owned and registered in the name of the plaintiff-appellant Eduardo Vilorio was damaged was not disputed in the present case; in other words, plaintiff Eduardo Vilorio was able to prove that he suffered damages because [the L-300 van] sustained damages; Second, the fact that defendant Alvin Jimenez at the time of the mishap was the driver of the [L-300 van] was not disputed in the present case. Thus, it necessarily follows as well that being the driver of the vehicle he is responsible for whatever actions or omissions he had done or not done in relation to his act of driving the subject motor vehicle;

5. further it is also worth noting that the damages caused to the [L-300] was because of the fact that it fell down an open construction canal wherein the same motor vehicle needed to be lifted by a crane to get it out of the canal;

6. Furthermore, it necessarily follows, that it is the way of the driving of said defendant Alvin which is the proximate cause of the damages sustained by the L-300 van;

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8. that being the driver of the L-300 van then it is the act of the defendant Alvin in bumping the motorcycle and swerving the same van to the left side of the highway causing it to fall in an open canal about six (6) feet high;

9. the van would not have sustained damages if it did not fall in the open canal about six (6) feet high; the same van did not also fall in the open canal should defendant Alvin had not swerve the van to the left and had it not bumped the motorcycle;

10. it therefore necessarily follows that it is the driving of the defendant Alvin Jimenez which caused the damages sustained by the van as it was him who was in full control of the subject motor vehicle at the time of the mishap.[12]

The Court finds that appellant – and the trial court – misconstrued the factual situation in the case to be one of quasi-delict or culpa aquiliana. The Civil Code recognizes three categories of negligence or culpa, namely, culpa aquiliana or civil negligence or tort or quasi-delict; culpa criminal or criminal negligence or that which results in the commission of a crime; and culpa contractual, or contractual negligence or that which results in a breach of contract.

The distinctions between the three kinds of negligence are well established. In culpa aquiliana and culpa criminal, negligence is direct, substantive and independent of any contractual obligation; there is no pre-existing contractual obligation. In culpa contractual, there is a pre-existing contractual obligation whether express or implied and the negligence is merely incidental to the performance of that obligation.[13] The most important distinction, in the context of the present case, is that in culpa contractual, as long as it is proved that there was a contract and it was

not carried out, it is presumed that the obligor was at fault and it is that obligor's duty to prove that there was no negligence on his part in carrying out the terms of his contract. In culpa aquiliana and culpa criminal, the plaintiff has the burden of proving negligence on the part of the defendant.[14]

A careful assessment of the records reveals that there is no question that there was a pre-existing contract between the parties Eduardo Viloria and Alvin Jimenez. Alvin insists that it was a lease. If so, then he as lessee had the obligation to return the thing leased upon the termination of the lease just as he received it.[15] Michael argues that Alvin merely "borrowed" the van. If so, there was a contract of loan which the Civil Code defines as –

ART. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

In commodatum, the bailee has the duty to return the thing under the following rules:

ARTICLE 1942. The bailee is liable for the loss of the thing, even if it should be through a fortuitous event:

- (1) If he devotes the thing to any purpose different from that for which it has been loaned;
- (2) If he keeps it longer than the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted;
- (3) If the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exempting the bailee from responsibility in case of a fortuitous event;
- (4) If he lends or leases the thing to a third person, who is not a member of his household;
- (5) If, being able to save either the thing borrowed or his own thing, he chose to save the latter.

ART. 1943. The bailee does not answer for the deterioration of the thing loaned due only to the use thereof and without his fault.

In either case, lease or commodatum, there is an obligation on the part of the obligee, whether lessee or bailee, to return the thing. In case of failure to return the thing in the condition it was delivered to the lessee or bailee, absence of fault on the part of the lessee or bailee is a valid defense against liability but the burden is upon the obligee to prove he was not at fault.

In the case at bench, the testimonies of the witnesses for the plaintiff alleged negligence on the part of Jimenez which caused the accident. First, SPO1 Cabarteja testified that when he asked the nurse on duty at the Sanitarium Hospital for confirmation whether the driver of the van was intoxicated, the nurse replied positively when she answered, "[Jimenez] smell[ed of] liquor." [16] Second, Jimenez could be driving at a high speed even when he was under the influence of alcohol. In his answer, he alleged that the presence of a motorcycle ahead without lights on it surprised him so that when the van was already very close to the motorcycle, hitting it was inevitable.[17] The observation of the trial court in its decision also points to the fact that the van was behind the motorcycle, viz: "As a final word, the extract of police blotter stated that the motorcycle was accidentally bumped and hit by a tailing L-300 van." [18]

The rough sketch of the scene of the accident shows that at point of impact, both vehicles were running in the same direction.[19] While the motorcycle was thrown to the right, about ten (10) meters from the point of impact, the van veered to the left, crossed the other lane, and slammed into the metal barriers, falling into an ongoing road

project of the government, about 6-8 meters deep. The barriers were approximately fifty (50) to sixty (60) meters away from the point of impact.[20] The component of the force that brought the van 50 – 60 meters away to the other side of the road could only be caused by the speed with which the van was traveling. Assuming *arguendo* that the motorcycle ahead had no taillight, experience dictates that with the L-300's headlights fully on, defendant driver of the van was in a vantage position to see the motorcycle ahead and he could just easily have avoided hitting the same by maneuvering to the left if he was not travelling at a fast pace. As it was, the van hit the motorcycle, Jimenez lost control of the wheel, and the van plowed into the metal barriers and then fell down the deep roadwork.

Jimenez never produced evidence to contradict appellant's allegation of negligence on his part. He only interposed denial, banking on the fact that he was never cited for any crime after the September 14, 2003 accident. Moreover, it is patent from the assailed decision that the lower court, by relying on his perception of the case as one only for quasi-delict, precluded a case for breach of contract. This is error. It led the lower court to dismiss appellant's complaint for lack of evidence upon his failure to prove negligence on the part of the defendant-appellee. What this Court perceives is the opposite: that defendant-appellee failed to establish with proof positive that he was entirely without fault in the incident that led to damage to the van.

As an obligee, whether lessee or bailee, Alvin had the obligation to return the thing loaned or borrowed in the condition it was delivered to him by Michael. Because the van was severely damaged, it is Alvin and not Michael who had to prove that he was entirely without fault when the accident happened in order to escape liability. After a careful assessment of the records of the case, this Court finds that Alvin failed to discharge the burden of evidence in his favor. By burden of evidence is meant that "burden of going forward" with the case.[21] Under the rules on evidence in civil cases, it is the plaintiff who must make out "a prima facie case in his favor." In the course of trial, however, "the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's prima facie case." Defendant may just even allege an affirmative defense -- one that does not deny "an essential ingredient in the plaintiff's cause of action," but offers a good defense when established,[22] -- to counter plaintiff's case and negate his claim. The burden of proving it then lies on defendant, otherwise, the courts must rule in plaintiff's favor.[23] Applying this principle of law in the case at bench, it is the duty of Michael to establish a prima facie case that under their contract, Alvin had an obligation to deliver the rented / borrowed L-300 Mitsubishi van in good condition, which he successfully did. When Alvin failed to deliver the same in good condition and alleged an affirmative defense, fortuitous event, the burden of evidence is shifted to him, which he failed to discharge. Therefore, "a verdict must be returned in favor of the plaintiff." [24]

This Court notes that the lower court held appellant to appellant's use of the word "accident"; to the lower court, this constitutes admission that the incident was indeed an accident one, where no fault lay with defendant. The Court finds no such admission on the part of appellant. In Our jurisdiction, the word "accident" does not have the narrow meaning indicating a situation in which no one is at fault, a *caso fortuito*. The Court takes judicial notice that the word accident has been, in the Philippines, used to refer to incidents or events without regard for the laying of fault or blame. Thus, the liberal use of the word "accident" should not be taken as an admission.

Anent the matter of impleading Rolando Jimenez, Sr. as party defendant, the records of the case disclose that there was no concrete proof shown that Alvin's father was involved in the 'contract' entered into by Michael and Alvin. Alvin after all was, by law, legally capacitated to contract the same, being nineteen (19) years old[25] at that time. Plaintiff-appellant's basis of impleading Rolando Jimenez, Sr. was Article 2180 of the Civil Code, in relation to the amendment on majority age under Republic Act No. 6809.

This Court reminds appellant that Article 2180 of the Civil Code pertains to the chapter on quasi-delicts, which this Court already ruled to have been erroneously cited by both the appellant and the court *a quo* as the basis for

the negative finding of negligence and liability in favor of the defendant-appellee. The provisions governing culpa contractual are Articles 1170 – 1174 of the Civil Code.[26] The concept of vicarious liability of parents is not mentioned in these provisions, as valid contracts are presumed to be entered into by legally capacitated persons. Therefore, the court a quo is correct in dismissing the case against Rolando Jimenez, Sr. for want of basis for his liability, but not in absolving Alvin of any liability.

Going now to the claims for damages. Viloria prays for actual, moral, and exemplary damages, attorney's fees, and litigation expenses. This Court deems it proper to award actual damages, representing the amount expended for the complete repair of the van. However, "moral damages are generally not recoverable in culpa contractual" except when bad faith is proved to be attendant.[27] In the case at bench, there was no showing that the breach of contract was attended with malice and bad faith.

This Court does not also see the necessity for the award of attorney's fees. Attorney's fees as part of damages, after all, are not meant to enrich the winning party at the expense of the losing litigant. In fact, they are not awarded every time a party prevails in a suit because it is not sound public policy to place a premium on the right to litigate. Finally, the award of exemplary damages is likewise not warranted.

WHEREFORE, the assailed decision of the Regional Trial Court (Branch 5), Iligan City is hereby REVERSED and SET ASIDE. Alvin Jimenez is liable for actual damages. The case is then REMANDED to the court of origin for further computation of the actual damages incurred by the plaintiff in repairing the Mitsubishi L-300 van.

SO ORDERED.

Francisco and Inting, JJ., concur.

[1] Rollo, pp. 56 - 60.

[2] Records, pp. 1-9.

[3] Records, pp. 36 – 41.

[4] Misspelled as "culurom" in the pleading.

[5] Id. at note 3.

[6] See Records, pp. 85 – 88.

[7] Records, pp. 358 – 363.

[8] Ibid.

[9] Records, pp. 364 – 380.

[10] Records, p. 384.

[11] Appellant's Brief, Rollo, pp. 22 - 53.

[12] Appellant's Brief, supra.

[13] *Rakes v. Atlantic Gulf Pacific Co.*, 7 Phil. 395.

[14] *Cangco v. Manila Railroad Co.*, 38 Phil. 769; *De Guia v. Meralco*, 40 Phil. 760.

[15] Article 1665, Civil Code.

- [16] Testimony of SPO1 Roosevelt Cabarteja, 6 December 2006 TSN; p. 20.
- [17] Records, p. 37.
- [18] Records, p. 363.
- [19] Exhibit “L”; Records, p. 180.
- [20] Testimony of SPO1 Cabarteja, 6 December 2006 TSN, pp. 33 – 34.
- [21] DBP Pool of Accredited Insurance Companies v. RMN, Inc., G.R. No. 147039, 27 January 2006, citing Tañada v. Angara, 338 Phil. 546, 597 (1997).
- [22] DBP Pool of Accredited Insurance Companies v. RMN, Inc., supra, citing Supreme Transliner Inc. vs. Court of Appeals, 421 Phil. 692, 698 (2001).
- [23] Royal Cargo Corporation v. DFS Sports Unlimited, Inc., G.R. No. 158621, 10 December 2008, citing Prudential Guarantee and Assurance, Inc. v. Trans-Asia Shipping Lines, Inc., G.R. No. 151890, 20 June 2006.
- [24] Ibid.
- [25] Complaint; Records, p. 2.
- [26] Spouses Batal v. Spouses San Pedro and Tominaga, G.R. No. 164601, 27 September 2006.
- [27] Spouses Viloria v. Continental Airlines, Inc., G.R. No. 188288, 16 January 2012.

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