

JOSE SON, PLAINTIFF AND APPELLEE, VS. CEBU AUTOBUS COMPANY, DEFENDANT AND APPELLANT.*G.R. No. L-6155. April 30, 1954*

Ponente: PARAS, C.J.

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The plaintiff, Jose Son, instituted in the Court of First Instance of Cebu an action seeking to recover from the defendant, Cebu Autobus Company, damages in the total sum of P2,660, alleged to have been suffered by the plaintiff as a result of the fact that the defendant's TPTJ truck No. 312 fell into a canal in the barrio of Macaas, municipality of Catmon, Cebu, on September 18, 1948, due to a defect of its engine or to the negligence of its driver, the plaintiff (then a passenger of the vehicle) having received serious injuries and two of his hogs (loaded therein) having been killed. The defense set up by the defendant is that the accident was caused by events which were unforeseen or, even if foreseen, were inevitable. After trial the court rendered a decision, sentencing the defendant to pay to the plaintiff the sum of P2,000 as moral damages, and the sum of P286.80 as plaintiff's actual expenses, together with his loss and unrealized profit in connection with the seven hogs loaded by the plaintiff in defendant's truck. From this decision the defendant has appealed.

As the defendant has elevated the case directly to this Court on questions of law, we are bound by the findings of fact contained in the appealed decision. We quote hereunder the conclusions pertinent to and decisive of the present appeal:

"The evidence adduced conclusively shows that TPU-Truck No. 312 of the defendant Cebu Autobus Company left Cebu City on September 17, 1948, at about 10:00 a.m. bound for Maya, municipality of Daan Bantayan, Cebu Province, arriving in the latter place at about 5:00 p.m. of the same day. It passed the night in Maya. It left Maya, Daan Bantayan, Oebu, on its return trip to Cebu City at about 4:00 a.m., September 18, 1948, without having been inspected or examined by the mechanic. The plaintiff boarded defendant's truck in barrio Maya, Daan Bantayan, Cebu, and loaded seven hogs for his home at Yati, Liloan, Cebu, paying the usual fare and freight. The plaintiff did not reach his destination safely, because the truck of the defendant fell into a canal at kilometer No. 56, barrio of Macaas, municipality of Catmon, Cebu. He was pinned down or pressed by the truck on September 18, 1948, and, as a consequence, he suffered complete fractures on his pelvic bone. Because of the shock and pain he lost his consciousness for sometime. He was brought to his house at Yati, municipality of Liloan, Cebu, unconscious on board another truck. Later, on the same day, he was brought in a special wagon to the City of Cebu, and was confined in the Velez Clinic for fourteen days, from September 18, 1948, to October 2, 1948. On October 2, 1948, the plaintiff went out of the Velez Clinic, but according to Dr. Jacinto Velez, physician and proprietor of the Velez Clinic, "the plaintiff needed 60 days more of treatment and rest before he could resume his former habitual work, inasmuch as he suffered complete fractures on his pelvic bone.

"The evidence further shows that two hogs of the plaintiff loaded on TPU Truck No. 312 of the defendant on September 18, 1948 died when the said truck fell into a canal at Macaas, Catmon, Cebu.

* * * * *

"The theory of the defendant is that the accident was unforeseen, or even if foreseen, was inevitable. This theory cannot be sustained. Whether the accident was caused by the defect of the engine of the truck of the defendant, or by the negligence of the driver, or by the breakage of the drag-link spring, the defendant is civilly liable to the plaintiff for the damages suffered by him. The evidence shows that the drag-link spring of the truck in question was not inspected or examined when it left Maya, Daan Bantayan, Cebu, on September 1, 1948, for Cebu City. If it were inspected or examined, the accident might have been avoided. The plaintiff had no means of avoiding the danger or escaping the injury. When he boarded at dawn of September 18, 1948, in Maya, Daan Bantayan, Cebu, defendant's TPU Truck No. 312, bound for his home at Yati Liloan, Cebu, and loaded on said truck seven hogs, he had every right to presume the truck perfectly in good condition which could transport him safely and securely to his destination. He paid the regular fare and the freight of the seven hogs."

The plaintiff is suing the defendant upon its contract of carriage which the latter had failed to perform by virtue of its failure to safely carry the plaintiff to his destination at the barrio of Yati, Liloan, Cebu, as distinguished from an action based on culpa aquiliana under which it is necessary, in order to recover damages, to prove fault or negligence on the part of the carrier. The distinction is clearly set out in the case of *Castro vs. Aero Taxicab Co.*,[*] 46 Off. Gaz., 2023, as follows: "La culpa aquiliana determina y engendra la responsabilidad y por eso es sustantiva, independiente; mientras que la culpa contractual presupone la preexistencia de una obligacion, por tanto es solo incidental—es decir, la infraccion o incumplimiento de esa obligacion es lo que genera la culpa contractual. Una implicacion o consecuencia característica de la diferencia entre ambos conceptos juridicos es que, tratandose de la culpa extracontractual o aquiliana, el demandante que reclame indemnizacion de danos y perjuicios tiene que probar, como requisito indispensable para que prospere su accion, la culpa o negligencia del demandado, mientras que, tratandose de la culpa contractual, es bastante que se pruebe la existencia del contrato y que la obligacion resultante del mismo se ha infringido o no se ha cumplido, siguiendose danos de esta infraccion e incumplimento."

The trial court based its decision in favor of the plaintiff upon the finding that the defendant had defaulted in its contract of carriage due to the accident, regardless of whether it was caused by a defect of the engine of the defendant's truck, by the negligence of its driver, or by the breakage of the drag-link spring; the evidence showing that the said drag-link spring was not inspected or examined when the vehicle left Maya, Daan Bantayan, Cebu, for Cebu City. In other words, the trial court overruled the defense interposed by the defendant that the accident was due to an event (unexpected breakage of the drag-link spring) which could not be foreseen or which, even if foreseen, was inevitable. In our opinion, the trial court was correct. Its express finding as to the cause of the accident in effect blames the defendant for it and logically rejects the defendant's theory that the cause emanated from an unforeseen or inevitable event. In essence, the trial court held that the drag-link spring of the truck in question was defective. In the case of *Lazam vs. Smith*, 45 Phil., 660, it was already held that an accident cause either by defects in the automobile or through the negligence of its driver is not a caso fortuito.

The conclusion of the trial court with respect to the amount of damages sustained by and award in favor of the plaintiff, is being factual, conclusive herein, since, as hereinbefore noted, the defendant has appealed directly to this Court solely on questions of law.

Upon the other hand, plaintiff's claim that the amount of moral damages awarded to him by the trial court should be raised to P300, cannot be sustained, because no appeal was taken by him from the decision a quo.

Wherefore, the appealed decision is affirmed and it is so ordered with costs⁷ against the defendant-appellant.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[*] 82 Phil., 359

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