

NIEVES QUINIO, ET AL., PLAINTIFFS AND APPELANTS, VS. MARCELO MUÑOZ, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-17222. October 29, 1965*

Ponente: REGALA, J.

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This is an appeal interposed by the plaintiffs from the decision of the Batangas Court of First Instance so far as it absolves defendants Manila Chronicle and Philippines Herald from liability for the death of Artemio Vetosa and Victor Gamab.

Velosa and Gamab were killed when they were hit by a speeding pick-up truck while the two were fixing the tire of their truck on the provincial road within the municipality of Cabuyao, Laguna early in the morning of May 25, 1957. The pick-up truck, with plate No. TH-3862, Nueva Ecija, 1957, was owned by Daniel Miranda and driven by Marcelo Munoz. It was then on its way to deliver Chronicle and Herald newspapers to news agents along the Manila-San Pablo-Batangas route.

As a result of the accident, a criminal charge was filed against the driver, Marcelo Munoz, in the Court of First Instance of Laguna. For their part, the heirs;^[1] of the deceased brought this action in the Court of First Instance of Batangas making Munoz, Daniel Miranda, the Manila Chronicle and the Philippines Herald co-defendants.

In the criminal case, Munoz was found guilty of double Homicide through reckless imprudence and was sentenced to a minimum penalty of 6 months of *arresto mayor* and a maximum penalty of 2 years 4 months and 1 day of *prision correccional* and to indemnify the heirs of Gamab and Velosa in the sum of P6,000. In the civil case, Muñoz was likewise held guilty of negligence in the operation of the vehicle, while his employer was found wanting in the "diligence of a good father of the family in the selection and supervision of his chofer." Both were ordered to pay P13,000 to the heirs of Victor Gamab and P19,640 to the heirs of Artemio Velosa. But the court freed the Chronicle and the Herald from liability on the ground that their relation to Miranda was that of shippers and carrier, respectively, and not that of employers and employee. It is for this reason that this appeal was brought to this Court.

Plaintiffs contend (1) that the Chronicle and the Herald are liable because they were actually the employers of Miranda and (2) that, at any rate, the Chronicle and the Herald are liable under article 377 of the Code of Commerce.

I

The Civil Code provides:

ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a *quasidelict* and is governed by the provisions of this Chapter.

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.

Now, then, was there any employer-employee relationship between the Chronicle and the Herald, on the one hand, and Miranda, on the other hand? This is important because, under the Civil Code provisions just quoted, an employer is liable not only for his employee's negligence but also for the negligence of his employee's employee: (See *Cuison v. Norton & Harrison Co.*, 55 Phil, 18 [1918]).

The determination of the existence of employer-employee relationship is one of the vexing problems in law. Here will enter a number of considerations: (a) the extent of control; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or workman supplies the instrumentalities tools and place of work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is a part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not in business. (Restatement of Agency 2d sec. 220 (2) [1958]).

Let us consider the "Carriage Agreement" of the parties at the time of the accident. It provides:

This agreement made and entered into by and between the Philippine Publishers, Inc. represented in this instance by its authorized Business Manager, J. J. Perez de Tagle and CHRONICLE PUBLICATIONS represented in this instance by its duly authorized Circulation Manager, Cesar A. Limjuco, with business addresses at the City of Manila, hereinafter referred as the Shippers, and DANIEL MIRANDA, of legal age, married and a resident of Talavera, Nueva Ecija, hereinafter called the CARRIER.

WITNESSETH

That for and in consideration of the sum of THIRTY-TWO and 50/100 (P32.50) PESOS per trip made, the CARRIER hereby undertakes to transport and deliver daily, including Sunday, the newspapers of the SHIPPERS from their respective plants in Manila to their representatives along the Manila-San Pablo-Batangas two route;

That the SHIPPERS shall equally share the daily remuneration due the CARRIER on a monthly basis payable on or before the fifth (5th) day of the succeeding month;

That the CARRIER shall undertake to deliver the newspapers of the SHIPPERS exclusively, from Manila to their representatives along the above mentioned route;

That the SHIPPERS reserve the right to the exclusive use of the CARRIER'S vehicle on the return trip for two days a month;

That the CARRIER shall be ready to pick up from the respective plants of the SHIPPERS their newspapers at 1:00 a.m. and must be at the end of its destination not later than Four (4) hours after receipt of the newspapers, barring causes due to force majeure (natural calamities);

That the CARRIER shall provide replacement transportation in case he is unable to make a trip in his own vehicle and in case of disruption in the service of his vehicle while in transit;

That the CARRIER shall be fined an amount of Eighty (P80.00) PESOS per trip not made or completed said amount to be deducted from the remuneration due them, provided that said failure did not arise from any cause

due to force majeure (natural calamities);

That the CARRIER shall be liable for loss, mutilation, misdelivery, or undue delay of newspaper while in transit for the cost of newspapers involved, said amount to be likewise deductible from the remuneration due the carrier;

That the CARRIER shall be liable for death injuries, or damages to third parties in case of accident, and no liability, pecuniary or otherwise, therefore, shall be incurred by the Shippers;

That the CARRIER shall not be authorized to display or cause to be written on any of its vehicles the words "THE PHILIPPINES HERELD", "PHILIPPINE PUBLISHERS, INC.", "THE MANILA CHRONICLE ", "THE CHRONICLE PUBLICATIONS", or any word that will give an impression that the same belongs to SHIPPERS;

That the SHIPPERS reserve the right to terminate this contract immediately in the event that the Public Service Commission disapproves the temporary permit granted to the CARRIER; however, in the event that a permanent permit is issued to the Carrier this contract shall be for ONE (1) year from February 15, 1957, provided further, that any breach or violation of the above-mentioned stipulations on the part of the CARRIER would be sufficient cause to terminate the contract immediately.

According to the plaintiffs, by giving the carrier a fixed route (Manilas-San Pablo-Batangas) from which he could not deviate, and by providing that delivery should be accomplished within four hours of receipt with consequent liability for delay and with responsibility to provide replacement if the carrier could not make the trip, the carrier was actually placed under the supervision and control of the shippers (Chronicle and Herald).

We do not think so. A building contractor does not become an employee simply because he agrees to build a house according to specifications, for a certain length of time, with liability for any delay and with responsibility for poor workmanship. Indeed the provision as to time within which delivery must be completed, the penalty for delay, the liability for loss or destruction of the newspapers and the responsibility to provide a substitute in case of inability of the carrier to make a trip were all designed to secure the accomplishment of one result - the distribution of the shippers' newspapers. If the carrier was at all subject to the control of the shippers it was only as to result of his work; otherwise, he was permitted to his work, according to his own methods, by his own and in the manner he chose to. (Cf. *Florida Publishing Co. v. Lourcey*, 141 Fla. 767, 193 So. 847 *Morris v. Constitution Pub. Co.*, 84 Ga. App. 861, 67 S.E. 2d 407 [1951]).

Plaintiffs contend that the agreement does not show that the carrier had a distinct occupation from that the shippers but that on the contrary, the distribution newspapers was part of the business of news publishing. The contract does not, but the evidence does show in what business the carrier was engaged. He was the owner and operator of a truck for hire, indicated by the use of plate No. TH-3862, Nueva Ecija, 1957 (i.e., Truck for Hire), on the truck in question, (i.e., *Transport Contractors, Inc. v. PSC*, 95 Phil. 744 [1954]).

As held in a case, "We have the definite opinion that newspaper boys as they perform their work generally in this country have a place in the pattern of American life that constitutes a distinct occupation." (*Miami Herald Publishing Co. v. Kendall*, 88 So. 2d 276 [1956]). In the Philippines, the shipment of newspapers to the provinces is generally done through transportation companies or through the mails.

In *Miami Herald Publishing Co. v. Kendall*, 88 So. 2d. 276, the court said: "True there was some supervision by the publisher's representative but while the newsboy was actually making his deliveries, he was acting alone and was a specialist, at least to the extent of following his route remembering the addresses of subscribers who were in good standing, and collecting and properly accounting for funds coming into his hands." This statement is apropos this case. Here, the carrier was not even subject to the slightest degree of supervision by the shippers.

The carrier owned the delivery truck; he worked for four hours at most and he was paid per trip made, instead of by the hour. These facts are important. For, if the time of employment is short, the worker is less apt to subject himself to control as to details and the job is more likely to be considered his job than the job of the one employing him. This is especially true if payment is to be made by the job and not by the hour. And the fact that a worker supplies his own tools is some evidence that he is not an employee. On the other hand, if the worker is using his employer's tools or instrumentalities, especially if they are of substantial value, it is normally understood that he will follow the directions of the owner in their use and this indicates that the owner is a master. (Restatement of Agency 2d at 490 [1958]).

Nor is there any merit in the claim that the Chronicle and the Herald are in any event liable under the following provisions of the Code of Commerce:

ART. 377. The carrier shall be liable for all the consequences arising from non-compliance on his part with the formalities prescribed by the laws and regulations of the public administration during the entire course of the trip and on the arrival at the point of destination, except when his omission arises from his having been induced into error by false statements of the shipper in the declaration of the merchandise.

If the carrier has acted in accordance with a formal order received from the shipper or consignee of the merchandise, both shall incur liability.

In the first place, this provision is inapplicable because it is intended to govern the rights and duties of shippers and carriers in the absence of a contract between the parties. This is evident from a consideration of other provisions embraced in Title Seven (Commercial Contracts of Transportation Overland) of the Code of Commerce.

In the second place, the application of this provision was urged for the first time only on plaintiffs' motion for reconsideration of the lower court's decision. Before that, their theory had been that the Chronicle and the Herald were liable to them for quasi-delict. Such a change of theory is not allowed.

Wherefore, the decision appealed from is affirmed. Without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Velosa was survived by his wife, the plaintiff Nieves Quimo, and six children, the plaintiffs Zenaida, Kuben, Lourdes, Alfredo Una and Mario, all surnamed Velosa; while Gamab was survived by his wife, the plaintiff Aquilina Marasigan, and four children Manuel, Marieta, Miguel and Minerva, all of whom are likewise plaintiff's in this case.

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