

**JOSE MIRANDA, PLAINTIFF AND APPELLEE, VS. MALATE GARAGE
& TAXICAB, INC., DEFENDANT AND APPELLANT.***G.R. No. L-8943. July 31, 1956*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff is the owner of a Studebaker car with Plate No. 3414 while defendant is an operator of a fleet of taxicabs. As such operator, defendant has in its employ a driver by the name of Quirino Ramos y Codier. Sometime in 1947 a collision took place between the taxicab driven by Ramos and the car belonging to the plaintiff, as a result of which a criminal action was instituted against Ramos charging him with having driven his car in a reckless and imprudent manner. Ramos entered a plea of guilty and, accordingly, was sentenced to indemnify the offended party in the sum of P2,318.40. A writ of execution was issued for the satisfaction of the indemnity but it was returned unsatisfied for lack of property belonging to Ramos which could be levied upon.

Having been unable to recover the indemnity awarded in his favor, plaintiff commenced the present action in the Court of First Instance of Manila against defendant seeking to collect the amount of P2,318.40 based on the latter's subsidiary liability under the provisions of the Revised Penal Code. Defendant, in its answer, admitted that Quirino Ramos y Codier was in its employ as a taxicab driver but denied all other allegations, particularly with regard to the indemnity, on the ground that it had no knowledge or information sufficient to form a belief as to the truth thereof. Considering that this answer does not categorically deny the principal allegations of the complaint, plaintiff filed a motion for summary judgment supported by an affidavit attaching thereto certified copies of the decision rendered in the criminal case, the writ of execution and the sheriff's return of the writ. Defendant filed a written opposition contending that its answer was sufficient in form to raise issues of material facts, and the court after considering the motion and the opposition thereto, issued an order denying the same.

When the case was called for hearing, plaintiff again raised the point that the case could be submitted for decision without the necessity of cross-examination of the plaintiff by defendant regarding his claim for damages. The court, over the objection of defendant, declared the case submitted for decision and rendered judgment ordering defendant to pay to plaintiff the sum of P2,318.40, with legal interest thereon from November, 1947 and to pay the costs. From this decision, defendant has appealed.

The main issue raised by defendant is that the lower court erred in allowing the case to be submitted for decision without giving said defendant an opportunity to cross-examine the plaintiff regarding his claim for damages because such claim was never admitted as in fact it was denied when in its answer it stated that it did not have sufficient knowledge or information to form a belief as to the truth thereof. In other words, defendant contends that in so alleging that it did not have sufficient knowledge or information to form a belief as to the claim for damages, it tendered an issue of fact which takes this case out of the rule relative to summary judgment.

It is true that under section 7, Rule 9 "Where the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the

effect of a denial", but "mere denials, unaccompanied by any facts which would be admissible in evidence at a hearing, are not sufficient to raise genuine issue of fact sufficient to defeat a motion for summary judgment" (*Piantadosi vs. Loew's Inc.*, 7 Fed. Rules Service, 786, June 2, 1943). It was also held that "Summary judgment is proper where there is no genuine issue of fact, even though an issue may be raised formally by the pleadings" (*Fletcher vs. Evening Newspaper Co.*, 4 Fed. Rules Service, 765, March 3, 1941). (Italics supplied.) And that "Where all the facts are within the judicial knowledge of the court, summary judgment may be granted as a matter of law" (*Fletcher vs. Evening Newspaper Co.*, 3 Fed. Rules Service, 530, June 28, 1940).

The question that now arise is: Is the issue tendered by defendant in its answer a genuine one?

We do not, believe so for it merely refers to the amount of damages the defendant is made subsidiarily liable by the Revised Penal Code which already appears in the decision rendered against its employee in the criminal case. That decision is binding and conclusive upon defendant not only with regard to its civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee. That is why the law says that his liability is subsidiary (Article 103, Revised Penal Code). To allow an employer to dispute the civil liability fixed in the criminal case would be to amend, nullify or defeat a final judgment rendered by a competent court. This cannot be done as may be implied from the following comment of this Court:

"The important question is whether a judgment of conviction sentencing the defendant to pay an indemnity is conclusive in an action against his employer for the enforcement of the latter's subsidiary liability under articles 102 and 103 of the Revised Penal Code. The appealed decision makes reference to two earlier decisions of this Court, namely, *City of Manila vs. Manila Electric Co.*, 52 Phil., 586, holding that such judgment of conviction is not admissible, and *Arambulo vs. Manila Electric Co.*, 55 Phil., 75, in effect holding that it is merely prima facie evidence, and to the prevailing view in the United States to the effect that the person subsidiarily liable is bound by the judgment if the former had notice of the criminal case and could have defended it had he seen fit to do so, and that otherwise such judgment is only prima facie evidence.

"After very careful reflection, we have arrived at the opinion that the judgment of conviction, in the absence of any collusion between the defendant and the offended party should bind the person subsidiarily liable. The stigma of a criminal conviction surpasses in effect and implications mere civil liability. Common sense dictates that a finding of guilt in a criminal case in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only preponderance of evidence to support a judgment, unless those who support the contrary rule should also hold that an absolution in a civil case will operate to automatically set aside the verdict against the defendant in the criminal case. It is anomalous, to say the least, to suppose that the driver, excelling 'Dr. Jekyll and Mr. Hyde', could be guilty of reckless negligence in so far as his obligation to pay indemnity is concerned, and at the same time could be free from any blame when said indemnity is sought to be collected from his employer, although the right to the indemnity arose from and was based on one and the same act of the driver.

"The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a subsidiary civil liability incident to and dependent upon his driver's criminal negligence which is a proper issue to be tried and decided only in a criminal action. In other words, the employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence." (*Martinez vs. Barredo*, 45 Off. Gaz., No. 11, 4922.)

It is true that an employer, strictly speaking, is not a party to the criminal case instituted against his employee but in substance and in effect he is considering the subsidiary liability imposed upon him by law. It is his concern, as well as of his employee, to see to it that his interest be protected in the criminal case by taking virtual participation

in the defense of his employee. He cannot leave him to his own fate because his failure is also his. And if because of his indifference or inaction the employee is convicted and damages are awarded against him, he cannot later be heard to complain, if brought to court for the enforcement of his subsidiary liability, that he was not given his day in court. It was not without purpose that this Court sounded the following stern warning:

"It is high time that the employer exercised the greatest care in selecting his employees, taking real and deep interest in their welfare; intervening in any criminal action brought against them by reason of or as a result of the performance of their duties, if only in the way of giving them the benefit of counsel; and consequently doing away with the practices of leaving them to their fates. If these be done, the American rule requiring notice on the part of the employer shall have been satisfied." (Martinez vs. Barredo, supra.)

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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