

**EX-MERALCO EMPLOYEES TRANSPORTATION COMPANY, INC.,
PETITIONER AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES,
RESPONDENT AND APPELLEE.**

G.R. No. L-5953. May 26, 1954

Ponente: JUGO, J.

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JUGO, J.:

On July 26, 1951, the Republic of the Philippines, represented by the Solicitor General, filed in the Municipal Court of the City of Manila (civil case No. 16716 of said court), a complaint against the corporation, known as Ex-Meralco Employees Transportation Company, Inc., for the recovery of damages in the sum of P1,332.17, alleging that:

"... the plaintiff is the owner of a Ford Service Truck bearing Plate No. T.P.L-975 assigned for the use of one of its instrumentalities, the Bureau of Telecommunications, Manila;

"That on January 10, 1951, while plaintiff's service truck was at full stop near a safety island in the middle of Espana Boulevard, it was bumped by a passenger truck bearing Plate No. T.P.U.-5112 belonging to and operated by the defendant corporation and driven by defendant's employee one 'Pakia Adona' who fled immediately after the collision."

The defendant corporation filed the following answer:

"What actually happened was that while the defendant's bus was heading toward Quiapo along the Espana Avenue, all of a sudden, the plaintiff's service truck, without making any sign on the part of its driver, unexpectedly, and instantly swerved to the left toward the front of defendant's bus for a U turn at the safety island at the intersection of Espana and Miguelin Streets, without first taking necessary precaution and violating thru street traffic rules and disregarding the stream of vehicles flowing along the thru Espana Street or avenue, so sudden and swift and without clear distance that to evade the collision was physically and materially impossible on the part of the defendant's driver, although the latter tried to evade it, in vain, by immediately applying the brakes and at the same time swerving to the left as to swerve it to the right was impossible and fatal to the plaintiff's truck, so that the collision was absolutely due to the fault, recklessness, and omission of thru street traffic rules on the part of the driver of the defendant; and defendant's driver fled due to threat of bodily harm shown by plaintiff's personnel on the spot."

On the date set for the trial, the defendant's (herein petitioner's) counsel objected to the trial because, as he alleged, there were sufficient grounds for the dismissal of the complaint. On January 16, 1952, he filed a formal motion to dismiss on the ground that "the plaintiff's complaint was without any cause of action as the driver concerned had not yet been adjudged liable for the damages, if any, complained of." The motion was denied.

The defendant (petitioner herein) filed in the Court of First Instance of Manila a petition for certiorari and preliminary injunction, praying said court to annul the order of the municipal court denying the dismissal of the case for the reason that the latter acted in excess or abuse of jurisdiction.

The court of first instance denied the petition for certiorari in the following language:

"* * * The facts alleged by the petitioner in its petition, and admitted by the respondents in their answer, cannot be the basis for the issuance of a writ of certiorari against the respondents, as prayed for by the petitioner, because it is within the power and jurisdiction of the respondent Judge to hear and decide Civil Case No. 16716 of the Municipal Court of the City of Manila, and that the said respondent Judge committed no abuse of discretion or excess of jurisdiction in denying petitioner's motion for the dismissal of said case."

The above order of the Court of First Instance is correct. The remedy of the petitioner should be a regular appeal filed in due time to the court of first instance. The ground that the complaint did not state facts sufficient to constitute a cause of action is not jurisdictional. The allegation that a criminal information should have been filed previously against the driver is, besides not being jurisdictional, untenable for the reason that the liability of a master for damages caused by his employee or agent in a business enterprise is primary and direct and not subsidiary. Subsidiary liability of the employer takes place only when the action is brought under the provisions of the Revised Penal Code.

In view of the foregoing, the decision appealed from of the Court of First Instance is affirmed, with costs against the petitioner. It is so ordered.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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