

EMILIO MANALO AND CLARA SALVADOR, PLAINTIFFS AND APPELLEES, VS. ROBLES TRANSPORTATION COMPANY, INC., DEFENDANT AND APPELLANT.*G.R. No. L-8171. August 16, 1956*

Ponente: MONTEMAYOR, J.

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Robles Transportation Company, Inc., later referred to as the Company, is appealing from the decision of the Court of First Instance of Rizal, civil case No. 2013, ordering it to pay plaintiffs Emilio Manalo and his wife, Clara Salvador, the sum of P3,000 with interest at 12 per cent per annum from November 14, 1952 plus the amount of P600 for attorney's fees and expenses of litigation, with costs.

The facts involved in this case are simple and without dispute. On August 9, 1947, a taxicab owned and operated by defendant appellant Company and driven by Edgardo Hernandez its driver, collided with a passenger truck at Paranaque, Rizal. In the course of and as a result of the accident, the taxicab ran over Armando Manalo, an eleven year old, causing him physical injuries which resulted in his death several days later. Edgardo Hernandez was prosecuted for homicide through reckless imprudence and after trial was found guilty of the charge and sentenced to one year prison correctional, to indemnify the heirs of the deceased in the amount of P3,000, in case of insolvency to suffer subsidiary imprisonment, and to pay costs. Edgardo Hernandez served out his sentence but failed to pay the indemnity. Two writs of execution were issued against him to satisfy the amount of the indemnity, but both writs were returned unsatisfied by the sheriff who certified that no property, real or personal, in Hernandez' name could be found.'

On February 17, 1953, plaintiffs Emilio Manalo and his wife Clara Salvador, father and mother respectively of Armando, filed the present action against the Company to enforce its subsidiary liability, pursuant to Articles 102 and 103 of the Revised Penal Code. The Company filed its appearance and answer and later an amended answer with special defenses and counterclaim. It also filed a motion to dismiss the complaint unless and until the convicted driver Hernandez was included as a party defendant, the Company considering him an indispensable party.. The trial court denied the motion to dismiss, holding that Hernandez was not an indispensable party defendant. Dissatisfied with this ruling, the Company filed certiorari proceedings with the Court of Appeals, but said appellate court held that Hernandez was not an indispensable party defendant, and consequently, the trial court in denying the motion to dismiss acted within the proper limits of its discretion. Eventually, the trial court rendered judgment sentencing the defendant Company to pay to plaintiffs damages in the amount of P3,000 with interest at 12 per cent per annum from November 14, 1952, plus P600 for attorney's fees and expenses for litigation, with costs. As aforesated, the Company is appealing . from this decision.

To prove their case against the defendant Company, the plaintiffs introduced a copy of the decision in the criminal case convicting Hernandez of homicide through reckless imprudence, the writs of execution to enforce the civil liability, and the returns of the sheriff showing that the two writs of execution were not satisfied because of the

insolvency of Hernandez, the sheriff being unable to locate any property in his name. Over the objections of the Company, the trial court admitted this evidence and based its decision in the present case on the same.

Defendant-appellant now contends that this kind of evidence is inadmissible and cites in support of its contention the cases of *City of Manila vs. Manila Electric Company* (52 Phil., 586), and *Arambulo vs. Manila Electric Company* (15 Phil., 75). This point has already been decided by this tribunal in the case of *Martinez vs. Barredo* (81 Phil., 1). After considering the same two cases now cited by appellant, this court held that the judgment of conviction, in the absence of any collusion between the defendant and offended party, is binding upon the party subsidiarily liable.

The appellant also claims that in admitting as evidence the sheriff's return of the writs of execution to prove the insolvency of Hernandez, without requiring said official's appearance in court, it was deprived of the opportunity to cross-examine said sheriff. A sheriff's return is an official statement made by a public official in the performance of a duty specially enjoined by law and forming part of official records, and is prima facie evidence of the facts stated therein. (Rule 39, section 11 and Rule 123, section 35, Rules of Court.) The sheriff making the return need not testify in court as to the facts stated in his entry. In the case of *Antillon vs. Barcelon*, 37 Phil., 151, citing *Wigmore on Evidence*, this court said:

"To the foregoing rules with reference to the method of proving private documents an exception is made with reference to the method of proving public documents executed before and certified to, under the hand and seal of certain public officials. The courts and the legislature have recognized the valid reason for such an exception. The litigation is unlimited in which testimony by officials is daily needed, the occasions in which the officials would be summoned from his ordinary duties to declare as a witness are numberless. The public officers are few in whose daily work something is not done in which testimony is not needed from official sources. Were there no exception to official statements, hosts of officials would be found devoting the greater part of their time to attending as witnesses in court or delivering their depositions before an officer. The work of Administration of government and the interest of the public having business with officials would alike suffer in consequence."

And this Court added:

"The law reposes a particular confidence in public officers that ' it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do In discharge of their public duty may be given in evidence and shall be taken to be true under such a degree of caution as the nature and circumstances of each case may appear to require,"

The appellant also contends that Articles 102 and 103 of the Revised Penal Code were repealed by the New Civil Code, promulgated in 1950, particularly, by the repealing clause under which comes Article 2270 of the said code. We find the contention untenable. Article 2177 of the New Civil Code expressly recognizes civil liabilities arising from negligence under the Penal Code, only that it provides that plaintiff cannot recover damages twice for the same act of omission of the defendant.

"ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code: But the plaintiff cannot recover damages twice for the same act of omission of the defendant."

Invoking prescription, appellant claims that the present action is barred by the Statute of limitations for the reason that it is an action either, upon an injury to the rights of the plaintiff, or upon a quasi delict, and that according to Article 1146 of the New Civil Code, such action must be instituted within four years. We agree with the appellee that the present action is based upon a judgment, namely, that in the criminal case, finding Hernandez guilty of homicide through reckless imprudence and sentencing him to indemnify the heirs of the deceased in the sum of

P3,000, and, consequently may be instituted within ten years.

As regards the other errors assigned by appellant, we find it unnecessary to discuss and rule upon them. Finding the decision appealed from to be in accordance with law, the same is hereby affirmed, with costs.

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

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