

ILUMINADA T. TORREDA, PETITIONER, VS. HON. ALEJANDRO R. BONCAROS, JUDGE CFI NEGROS ORIENTAL, BRANCH V; VISAYAN SAWMILL, INC., ANG TAY, AND SERAPION TIONSON, RESPONDENTS.

G.R. No. L-39832. January 30, 1976

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and mandamus to set aside the orders of respondent court dismissing the civil action filed therewith by petitioner, Civil Case No. 5541, for damages arising from the death of her husband in a motor vehicle incident allegedly caused by the negligence of the driver of private respondents, and to order the reinstatement of said case for trial on the merits.

On December 15, 1972, petitioner filed the civil action aforementioned alleging inter alia that:

"3. That defendants VISAYAN SAWMILL, Inc., and ANG TAY, are the proprietors and operators of a GI-cargo truck, with plate No. 29139, (1963), devoted to the hauling, transportation and carrying of lumber produced from defendants' Sawmill and Timber Concession, situated in Cawitan, municipality of Sta. Catalina, province of Negros Oriental, to any place within the said province.

4. That defendant Serapion Tionson, is a driver by profession, employed by his co-defendants herein, to drive and to operate the said GI-cargo truck with plate No. 29139, in connection with defendants' lumber business.

5. That on July 25, 1963, at around ten o'clock in the evening, defendant Serapion Tionson, pursuant to his duties and obligations as driver of his co-defendants, drove the aforementioned cargo truck, from defendants' lumber yard at Cawitan, Sta. Catalina, Negros Oriental and proceeded to deliver sawed lumber to Dumaguete City and other towns carrying a full load of sawed lumber and passing along the National Road.

6. That the lumber carried by defendant Tionson and loaded on his truck, was untied and carelessly arranged and as a result thereof, after traveling over eighty (80) kilometers and before reaching the City of Dumaguete, due to the traffic agitation and movement of the cargo truck, the lumber inside the truck soon lost its orderly and regular arrangement, and some of the pieces loaded soon protruded frontwise and sidewise, beyond and outside the body of the truck and endangering the traffic along the National Road.

7. That shortly before reaching the boundary of the City of Dumaguete and just as the said cargo truck driven by defendant Tionson, was passing along barrio Banilad of the municipality of Bacong (a town adjacent to Dumaguete City), another cargo truck was sighted on the same National Highway, coming in opposite, direction from Dumaguete City, going southward. (plate No. T-31650).

8. That defendant Serapion Tionson did not stop his recklessly loaded and driven cargo truck; he did not even take the necessary precautions required by circumstances, and imprudently continued his fast, reckless and illegal nighttime driving along the National Road.

9. That the late Pascasio Torreda was then a passenger on the other south-bound truck, No. 31650 already mentioned, and was seated on the front seat, left side of the driver.

10. That when defendant Tionson's cargo truck was near the place or on the level of the other south-bound cargo truck, the protruding lumber inside defendants' cargo truck, struck and fatally hit the late PASCASIO TORREDA who, as already stated, was then seated inside the south-bound truck, and PASCASIO TORREDA was literally pierced and nailed by the protruding lumber to the back of his seat killing him almost instantly.

11. That the death of the late PASCASIO TORREDA, was due to the careless and faulty operation and management of the defendant herein and to the careless, imprudent and illegal driving of their driver Serapion Tionson.

12. That PASCASIO TORREDA, at the time of his death was at the prime of age and of manhood, and was the Manager, operator and proprietor of fishing business or fishing industry operated by him, in the province of Negros Oriental; and was making a profit of not less than ONE HUNDRED THOUSAND PESOS (P100,000.00), every year.

13. That due to the untimely death of the late Pascasio Torteda, his business was completely crippled and in fact, it went down soon after his death; and the plaintiff herein not only failed to realize the profits usually made during the lifetime of the late husband, but was even brought to Court, for her failure to maintain and to keep up their obligations.

14. That due to the untimely and sudden death of the late PASCASIO TORREDA, the plaintiff herein suffered financial losses and damages, amounting to not less than ONE HUNDRED THOUSAND (P100,000.00) PESOS.

15. That in addition, the plaintiff suffered immense pain and suffering, morally, mentally and physically and accordingly, has suffered moral damages not less than FIFTY THOUSAND PESOS (P50,000.00).

16. That plaintiff furthermore, was constrained to engage the services of counsel, in the total sum of FIFTEEN THOUSAND PESOS (P15,000).

17. That a criminal complaint was filed by the Chief of Police of Bacong, Oriental Negros, against the drivers of both trucks in 1963, for homicide thru reckless imprudence and for driving the truck in a reckless and imprudent manner, in disregard of traffic rules and regulations and without taking the necessary precautions to avoid accidents. (Criminal Case No. 7402, CFI, Negros Oriental, Branch II).

18. That the accused were duly arrested and they posted the required bail-bond for their provisional or temporary liberty.

19. That some time after his arrest, the accused Serapion Tionson, jumped his bail and escaped from the jurisdiction of the Court, and allegedly went to INDONESIA, a foreign country over which this Hon. Court has no jurisdiction, and where he is hiding until now, obviously to defeat the purpose of criminal case No. 7402 of this Hon. Court.

20. That Criminal Case No. 7402 of this Hon. Court has been pending in Court for over NINE (9) YEARS and it appears as if it can no longer be prosecuted and terminated by the Court, with respect to SERAPION TIONSON due to his absence from the Philippines and to the lack of jurisdiction and difficulty of this Court to reach him and to bring him back to this jurisdiction.

21. That the hearing or trial of Criminal Case No. 7402 has not even commenced until now.

22. That up to the present time, the defendants herein, have not done anything to alleviate the plight and suffering of the WIDOW, the plaintiff herein, or to compensate her for the damages suffered by her, due to the untimely death of her late husband, despite legal demands to that effect.

23. That under the Revised Rules of Court, when a criminal complaint is instituted, the civil action for the recovery of civil liability, arising from the offense charged, is impliedly instituted, unless the offended party

expressly reserves his or her right to institute it separately.

24. That in view of the escapade of defendant Tionson to a foreign country, and the difficulty to reach him and to bring him back, and in view furthermore of the lapse of NINE (9) YEARS, which is sufficient to indicate the hardship if not the impotency of the Hon. Court to bring Tionson back to this jurisdiction, – on August 19, 1972, the widow and now Plaintiff in this case, filed in Criminal Case No. 7402 a NOTICE manifesting that "she reserves her right to file a separate civil action, independently of the criminal case, against the driver and his masters or employers and now defendants herein".

25. That this civil action is filed under articles 2176-2177 of the Civil Code; article 100 of the Revised Penal Code; and Rule III, sec. 2 of the Revised Rules of Court." (Pars. 3 to 25 of Annex C, pp. 30-33, Record.)

On February 16, 1973, defendants, herein private respondents, filed a motion to dismiss "on the ground that the complaint states no cause of action against them," claiming principally that (a) only the person causing the injury, not his employer, can be held liable and (b) a civil action cannot be prosecuted pending the termination of the criminal case. After petitioner had filed her opposition, on September 8, 1973, respondents filed a supplemental motion to dismiss alleging that the action of petitioner based on culpa aquiliana under Articles 2176-2177 of the Civil Code, had already prescribed pursuant to Article 1146(2) of the Civil Code. In opposition to said supplemental motion, petitioner argued that her action is just a continuation of the civil action which was deemed filed jointly with the criminal complaint in Criminal Case No. 7402, as alleged in her complaint, and since that case is still pending and, moreover, because defendant Tionson escaped the jurisdiction of the court, the prescriptive period for her civil action has been suspended, the motion should be denied. On January 17, 1974, respondent court issued the impugned order of dismissal thus:

"Acting on the Motion to Dismiss and Supplemental Motion to Dismiss filed by counsel of defendants, as well as the Oppositions thereto filed by counsel of plaintiff, and it appearing that the complaint which is based on Art. 2177 of the Civil Code (quasi-delict) was filed only on December 15, 1972, or more than nine years after the incident (July 25, 1963) complained of, this Court rules that plaintiff's action has prescribed under Art. 1146 of the New Civil Code".

WHEREFORE, the Supplemental Motion to Dismiss is hereby granted, and this case ordered dismissed." (Page 17, Record.)

and, thereafter, acting on petitioner's motion for reconsideration, the following:

"ORDER

The instant action is based on Articles 2176 and 2177 of the Civil Code. It appears that the acts complained of took place on July 25, 1963 and that the Information for Reckless Imprudence Resulting in Homicide was filed on January 28, 1964. Since the trial of the said criminal case has not yet begun, the offended party, the plaintiff herein, filed on August 19, 1972 a formal notice of reservation to institute a separate civil action which she filed on December 15, 1972 which is now the case at bar.

The defendants, Visayan Sawmill, Inc. and Ang Tay, filed a Motion to Dismiss the complaint for lack of cause of action which was opposed by the plaintiff. Subsequently, the same defendants filed a supplemental motion to dismiss on the ground that the action has now prescribed.

The Court in its Order dated January 17, 1974, dismissed the complaint on the ground of prescription. The plaintiff moved to reconsider the Order on the ground that the same is contrary to law which was opposed by the defendants. The issue before this Court is whether the action has already prescribed or not.

The Motion for Reconsideration should be denied. In the case of *Corpus vs. Paje*, 28 SCRA 1062, reckless imprudence is not one of those cases covered by Article 33 of the Civil Code and as such, therefore, there is no

independent civil action that can be prosecuted by the offended party. The offended party is, however, not left without a remedy. She can file an action for quasi-delict under the Civil Code, subject to Article 1146 of the same, as to the prescriptive period.

Since the instant action was filed only on December 15, 1972, the present action has therefore clearly prescribed pursuant to Article 1146, paragraph 2, the filing of the notice to file a separate civil action on August 19, 1972 notwithstanding, because, in the first place, there was nothing to be reserved and the filing of the Information in the criminal case did not suspend the running of the prescriptive period for the filing of an action nor the notice of reservation pursuant to Article 2176 of the Civil Code. (*Corpus vs. Paje, supra*; *Capuno vs. Pepsi Cola Bottling Co., et al.*, 13 SCRA 659)

WHEREFORE, the Motion for Reconsideration is hereby DENIED." (Page 21, Record.)

In a way and from a very technical viewpoint, there could be merit in respondents' pose that petitioner's subject action, considered in its culpa aquiliana aspect, has already prescribed. Regardless of the criminal case and the civil action deemed joined with it, the case of quasi-delict could have been filed separately, for this kind of action is entirely independent of the criminal responsibility of the offender. The civil action joined with the criminal case is predicated on civil liability arising from the offense and is distinct and different from the action on quasi-delict arising from the same act. As explicitly laid down in Article 2177 of the Civil Code, "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 or omission of the defendant."

On the other hand, We note that the original motion to dismiss of respondents which was filed on February 16, 1973 did not allege prescription. It was only in the supplemental motion to dismiss filed more than six months later, on September 8, 1973, that such defense was interposed for the first time. Under the peculiar circumstances of this case, where the petitioner would be left without a remedy should respondents be excused for belatedly invoking prescription, equity and substantial justice make it preferable to apply Section 2 of Rule 9 which provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. While there may be instances and situations justifying a relaxation of this rule, Our considered view is that in the circumstances of the instant case, the ends of justice would be better served by applying the general rule, considering further that respondents have not given any reason at all as to why their defense of prescription was not invoked earlier, instead of in a supplemental motion, when the basis thereof was already existing and evident even before the filing of the original motion.

Wherefore, the petition is granted. The orders of respondent court of January 17 and November 20, 1974 are hereby set aside and respondent court is ordered to proceed with the trial of Civil Case No. 5541 on the merits. Costs against private respondents.

Fernando (Chairman), Antonio, Aquino, and Concepcion Jr., JJ., concur.

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