

MAMERTO DAILISAN, ET AL., PLAINTIFFS AND APPELLANTS VS. SEBASTIAN SO ENG SO, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12173. January 28, 1961*

Ponente: DIZON, J.

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On February 13, 1957, upon motion of herein appellants, the Court of Appeals elevated this case to this Court upon the ground that the amount in controversy exceeds P50,000.00. Subsequently, however, and while this case was pending decision in this Court, the Judiciary Act was amended by increasing the jurisdictional amount for the Court of Appeals to not more than P200,000.00.

The present case originated from Criminal Case No. 1235 of the Court of First Instance of Davao, for homicide through reckless imprudence, against Bernardo Libawan in which the latter was convicted by final judgment. The offended parties reserved the right to recover indemnity in a separate civil action. Pursuant to said reservation the present action for damages was filed in the lower court on October 23, 1952 by the spouses Mamerto Dailisan and Felicidad Romero, now appellants, against Sebastian So Eng So, Yao Lam alias Koga and Bernardo Libawan, for the recovery of the sum of P60,000.00 as damages, the further sum of P1,000.00 as reimbursement of funeral expenses and the sum of P6,000.00 as attorney's fees.

Libawan filed his answer to the complaint admitting the material allegations thereof. The other two defendants, after specifically denying the material averments of the complaint, alleged by way of affirmative defense, that Bernardo Libawan was not an employee of Sebastian So Eng So at the time of the accident and that, consequently, they are not subsidiarily liable for civil indemnity as a consequence of Libawan's conviction of the crime of homicide through reckless imprudence.

As correctly found by the trial court, the fact of the case are as follows:

"From the evidence submitted by both parties, it has been disclosed that the defendant Sebastian So Eng So, owner of an automobile for his private use, on December 28, 1950, in the City of Davao, ordered his driver, Andres Borneo, to conduct the defendant Yao Lam alias Koga to Calinan, Davao City. But when at that time the driver, Andres Romeo, was not feeling well because he had headache, and because of this, he requested his friend, the defendant Bernardo Libawan, who was also a driver, to drive the car for him and to conduct Yao Lam alias Koga to Calinan, Davao City, without the approval or sanction of the owner of the car, the defendant Sebastian So Eng So. It was further proven during the trial that when the defendant Bernardo Libawan was driving the car to Calinan, Davao City, at about one o'clock in the afternoon of December 28, 1950, young students by the names of Levi Daser, Desidero Narbay and Antonio Dailisan, left the city on bicycles for the coca-cola plant outside of the City of Davao. When the car driven by Bernardo Libawan was about 100 meters from the coca-cola plant, one of these boys, Antonio Dailisan, made a turn of his bicycle and while he was on the right side of the road on his way to the city, the automobile driven by Bernardo Libawan ran over him, which resulted in the instantaneous death of the student, Antonio Dailisan. The driver, Bernardo Libawan, was running fast and shortly before or at the time of the accident said driver, Bernardo Libawan, did not take proper care and diligence as required by the circumstances, thus he was guilty of reckless imprudence."

The principal question raised by appellants is factual, viz., whether or not on the date of the accident, Bernardo Libawan was the employee of Sebastian So Eng So. Moreover, it is clear that this action is for the recovery of the maximum sum of P67,000.00 which is now within the jurisdiction of the Court of Appeals.

Wherefore, the present case is hereby remanded to the Court of Appeals in accordance with law.

Paras, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

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