

**JIMMY CO, DOING BUSINESS UNDER THE NAME & STYLE
DRAGON METAL MANUFACTURING, PETITIONER, VS. COURT OF
APPEALS AND BROADWAY MOTOR SALES CORPORATION,
RESPONDENTS.**

G.R. No. 124922. June 22, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

On July 18, 1990, petitioner entrusted his Nissan pick-up car 1988 model[1] to private respondent - which is engaged in the sale, distribution and repair of motor vehicles - for the following job repair services and supply of parts:

- Bleed injection pump and all nozzles;
- Adjust valve tappet;
- Change oil and filter;
- Open up and service four wheel brakes, clean and adjust;
- Lubricate accelerator linkages;
- Replace aircon belt; and
- Replace battery[2]

Private respondent undertook to return the vehicle on July 21, 1990 fully serviced and supplied in accordance with the job contract. After petitioner paid in full the repair bill in the amount of P1,397.00,[3] private respondent issued to him a gate pass for the release of the vehicle on said date. But came July 21, 1990, the latter could not release the vehicle as its battery was weak and was not yet replaced. Left with no option, petitioner himself bought a new battery nearby and delivered it to private respondent for installation on the same day. However, the battery was not installed and the delivery of the car was rescheduled to July 24, 1990 or three (3) days later. When petitioner sought to reclaim his car in the afternoon of July 24, 1990, he was told that it was carnapped earlier that morning while being road-tested by private respondent's employee along Pedro Gil and Perez Streets in Paco, Manila. Private respondent said that the incident was reported to the police.

Having failed to recover his car and its accessories or the value thereof, petitioner filed a suit for damages against private respondent anchoring his claim on the latter's alleged negligence. For its part, private respondent contended that it has no liability because the car was lost as a result of a fortuitous event - the carnapping. During pre-trial, the parties agreed that:

“(T)he cost of the Nissan Pick-up four (4) door when the plaintiff purchased it from the defendant is P332,500.00 excluding accessories which were installed in the vehicle by the plaintiff consisting of four (4) brand new tires, magwheels, stereo speaker, amplifier which amount all in all to P20,000.00. It is agreed that the vehicle was lost on July 24, 1990 `approximately two (2) years and five (5) months from the date of the purchase.’ It was agreed that the plaintiff paid the defendant the cost of service and repairs as early as July 21, 1990 in the amount of P1,397.00 which amount was received and duly receipted by the defendant company. It

was also agreed that the present value of a brand new vehicle of the same type at this time is P425,000.00 without accessories.”[4]

They likewise agreed that the sole issue for trial was who between the parties shall bear the loss of the vehicle which necessitates the resolution of whether private respondent was indeed negligent.[5] After trial, the court a quo found private respondent guilty of delay in the performance of its obligation and held it liable to petitioner for the value of the lost vehicle and its accessories plus interest and attorney’s fees.[6] On appeal, the Court of Appeals (CA) reversed the ruling of the lower court and ordered the dismissal of petitioner’s damage suit.[7] The CA ruled that: (1) the trial court was limited to resolving the issue of negligence as agreed during pre-trial; hence it cannot pass on the issue of delay; and (2) the vehicle was lost due to a fortuitous event.

In a petition for review to this Court, the principal query raised is whether a repair shop can be held liable for the loss of a customer’s vehicle while the same is in its custody for repair or other job services?

The Court resolves the query in favor of the customer. First, on the technical aspect involved. Contrary to the CA’s pronouncement, the rule that the determination of issues at a pre-trial conference bars the consideration of other issues on appeal, except those that may involve privilege or impeaching matter,[8] is inapplicable to this case. The question of delay, though not specifically mentioned as an issue at the pre-trial may be tackled by the court considering that it is necessarily intertwined and intimately connected with the principal issue agreed upon by the parties, i.e. who will bear the loss and whether there was negligence. Petitioner’s imputation of negligence to private respondent is premised on delay which is the very basis of the former’s complaint. Thus, it was unavoidable for the court to resolve the case, particularly the question of negligence without considering whether private respondent was guilty of delay in the performance of its obligation.

On the merits. It is not a defense for a repair shop of motor vehicles to escape liability simply because the damage or loss of a thing lawfully placed in its possession was due to carnapping. Carnapping per se cannot be considered as a fortuitous event. The fact that a thing was unlawfully and forcefully taken from another’s rightful possession, as in cases of carnapping, does not automatically give rise to a fortuitous event. To be considered as such, carnapping entails more than the mere forceful taking of another’s property. It must be proved and established that the event was an act of God or was done solely by third parties and that neither the claimant nor the person alleged to be negligent has any participation.[9] In accordance with the Rules of evidence, the burden of proving that the loss was due to a fortuitous event rests on him who invokes it[10]- which in this case is the private respondent. However, other than the police report of the alleged carnapping incident, no other evidence was presented by private respondent to the effect that the incident was not due to its fault. A police report of an alleged crime, to which only private respondent is privy, does not suffice to establish the carnapping. Neither does it prove that there was no fault on the part of private respondent notwithstanding the parties’ agreement at the pre-trial that the car was carnapped. Carnapping does not foreclose the possibility of fault or negligence on the part of private respondent.

Even assuming *arguendo* that carnapping was duly established as a fortuitous event, still private respondent cannot escape liability. Article 1165[11] of the New Civil Code makes an obligor who is guilty of delay responsible even for a fortuitous event until he has effected the delivery. In this case, private respondent was already in delay as it was supposed to deliver petitioner’s car three (3) days before it was lost. Petitioner’s agreement to the rescheduled delivery does not defeat his claim as private respondent had already breached its obligation. Moreover, such accession cannot be construed as waiver of petitioner’s right to hold private respondent liable because the car was unusable and thus, petitioner had no option but to leave it.

Assuming further that there was no delay, still working against private respondent is the legal presumption under Article 1265 that its possession of the thing at the time it was lost was due to its fault.[12] This presumption is

reasonable since he who has the custody and care of the thing can easily explain the circumstances of the loss. The vehicle owner has no duty to show that the repair shop was at fault. All that petitioner needs to prove, as claimant, is the simple fact that private respondent was in possession of the vehicle at the time it was lost. In this case, private respondent's possession at the time of the loss is undisputed. Consequently, the burden shifts to the possessor who needs to present controverting evidence sufficient enough to overcome that presumption. Moreover, the exempting circumstances - earthquake, flood, storm or other natural calamity - when the presumption of fault is not applicable[13] do not concur in this case. Accordingly, having failed to rebut the presumption and since the case does not fall under the exceptions, private respondent is answerable for the loss.

It must likewise be emphasized that pursuant to Articles 1174 and 1262 of the New Civil Code, liability attaches even if the loss was due to a fortuitous event if "the nature of the obligation requires the assumption of risk".[14] Carnapping is a normal business risk for those engaged in the repair of motor vehicles. For just as the owner is exposed to that risk so is the repair shop since the car was entrusted to it. That is why, repair shops are required to first register with the Department of Trade and Industry (DTI)[15] and to secure an insurance policy for the "shop covering the property entrusted by its customer for repair, service or maintenance" as a pre-requisite for such registration/accreditation.[16] Violation of this statutory duty constitutes negligence per se.[17] Having taken custody of the vehicle, private respondent is obliged not only to repair the vehicle but must also provide the customer with some form of security for his property over which he loses immediate control. An owner who cannot exercise the seven (7) juses or attributes of ownership – the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate and to the fruits -[18] is a crippled owner. Failure of the repair shop to provide security to a motor vehicle owner would leave the latter at the mercy of the former. Moreover, on the assumption that private respondent's repair business is duly registered, it presupposes that its shop is covered by insurance from which it may recover the loss. If private respondent can recover from its insurer, then it would be unjustly enriched if it will not compensate petitioner to whom no fault can be attributed. Otherwise, if the shop is not registered, then the presumption of negligence applies.

One last thing. With respect to the value of the lost vehicle and its accessories for which the repair shop is liable, it should be based on the fair market value that the property would command at the time it was entrusted to it or such other value as agreed upon by the parties subsequent to the loss. Such recoverable value is fair and reasonable considering that the value of the vehicle depreciates. This value may be recovered without prejudice to such other damages that a claimant is entitled under applicable laws.

WHEREFORE, premises considered, the decision of the Court Appeals is REVERSED and SET ASIDE and the decision of the court a quo is REINSTATED.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Mendoza, JJ., concur.

[1] Registered in the name of petitioner with Plate No. PJK-666.

[2] Rollo, p. 81.

[3] Covered by CBC Receipt No. 691148; Rollo, p. 10.

[4] Rollo, pp. 28-29.

[5] Rollo, p. 29.

[6] The dispositive portion of the trial court's decision reads:

“Accordingly, this Court finds the defendant liable to the plaintiff for the value of the vehicle in question. Defendant is ordered to pay plaintiff the value of the vehicle in the amount of Three Hundred Thirty Two Thousand Five Hundred Pesos representing the acquisition cost of the vehicle plus the amount of Twenty Thousand Pesos representing the cost of the four brand new tires, magwheels, pioneer stereo, speakers, air-conditioner, which were installed by the plaintiff in his vehicle after the plaintiff bought the vehicle from the defendant. While it is true that plaintiff purchased from the defendant the vehicle about two years and five months before the same was lost, and therefore the vehicle had already depreciated from its original value at the time it was lost, it is also true as agreed upon by the parties in the pre-trial, that the present value of a brand new vehicle of the same type has at this time increased to Four Hundred Thousand Pesos without accessories, so whatever is awarded by this Court to the plaintiff in this decision would not even be sufficient to purchase a brand new vehicle at the present prices. This Court believes that the amount awarded to the plaintiff above-stated represents a fair compromise, considering the depreciation of the vehicle from the time it was purchased and to the time it was lost and which is off-seated by the increase cost of a brand new vehicle at the present time. Defendant is likewise ordered to pay plaintiff legal interest in the amount above-stated from the date of the finality of this decision until full payment of the obligation. Further, defendant is ordered to pay plaintiff Ten Thousand Pesos by attorney’s fees.” (sic was not included so as not to clutter the narration); Rollo, pp. 78, 94.

[7] CA Decision promulgated August 31, 1995 penned by Justice Austria-Martinez with Justices Lantin and Salas, concurring; Rollo, pp. 26-32.

[8] *Caltex v. CA*, 212 SCRA 448; *Bergado v. CA*, 173 SCRA 497 citing *Permanent Concrete Products, Inc. v. Teodoro*, 26 SCRA 332. In the *Bergado* case (p. 501), the court reiterated the rule that the specific exceptions to the general rule to be observed in pre-trials emphasized in *Gicano v. Gegato*, 157 SCRA 140 is “that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties’ pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant had been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff’s, or otherwise established by the evidence.”

[9] *Lasam v. Smith*, 45 Phil. 657; *General Enterprises, Inc., v. Llianga Bay Logging Co., Inc.*, 120 Phil. 702; *Tugade v. CA*, 85 SCRA 226.

[10] Section 1, Rule 131, 1989 Revised Rules on Evidence provides: “Burden of proof. - Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.” (Italics supplied).

[11] Article 1165. x x x x x x x x

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for fortuitous event until he has effected the delivery. (Italics supplied).

[12] Article 1265. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity. (Italics supplied).

[13] New Civil Code, Article 1265.

[14] Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.”

Article 1262. x x x x x x x x

When by law or stipulation, the obligor is liable even for fortuitous event, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk. (*Italics supplied*).

[15] P.D. 1572 (EMPOWERING THE SECRETARY OF TRADE TO REGULATE AND CONTROL THE OPERATION OF SERVICE AND REPAIR ENTERPRISES FOR MOTOR VEHICLES, HEAVY EQUIPMENT AND ENGINES AND ENGINEERING WORKS; ELECTRONICS, ELECTRICAL, AIRCONDITIONING AND REFRIGERATION; OFFICE EQUIPMENT; MEDICAL AND DENTAL EQUIPMENT; AND OTHER CONSUMER MECHANICAL AND INDUSTRIAL EQUIPMENT; APPLIANCES OR DEVICES, INCLUDING THE TECHNICAL PERSONNEL EMPLOYED THEREIN).

Section 1. Accreditation. All enterprises and technical personnel employed therein engaged in the service and repair of motor vehicles, heavy equipment, engines and engineering works; electronics, electrical, air-conditioning and refrigeration; office equipment; medical and dental equipment; and other consumer industrial electro-mechanical, chemical and gaseous equipment, machinery, appliances or devices should Apply for accreditation with the Department of Trade within ninety (90) days from the promulgation of this decree and should apply for renewal on or before the 31st day of January of every year thereafter. No such service or repair enterprises and technical personnel shall be licensed or permitted to operate in the Philippines for the first time without first being accredited by the Department of Trade.

[16] DTI Ministry Order No. 32, Rule III

“Section 1. REQUIREMENTS FOR ACCREDITATION:

(1) Enterprise applying for original accreditation shall submit the following:

1.1 List of machineries/equipment/tools in useful condition;

1.2 List of certified engineers/accredited technicians mechanics with their personal data;

1.3 Copy of Insurance Policy of the shop covering the property entrusted by its customer for repair, service or maintenance together with a copy of the official receipt covering the full payment of premium;

1.4 Copy of Bond referred to under Section 7, Rule III of this Rules and Regulations;

1.5 Written service warranty in the form prescribed by the Bureau;

1.6 Certificate issued by the Securities and Exchange Commission and Articles of Incorporation or Partnership in case of corporation or partnership;

1.7 Such other additional documents which the director may require from time to time.

Section 8. INSURANCE POLICY

The insurance policy for the following risks like theft, pilferage, fire, flood and loss should cover exclusively the machines, motor vehicles, heavy equipment, engines, electronics, electrical, airconditioners, refrigerators, office machines, and data processing equipment, medical and dental equipment, other consumer mechanical and industrial equipment stored for repair and/or in the premises of the applicant.” (*Italics supplied*).

[17] Cipriano v. CA, 263 SCRA 711 citing F.F. Cruz and Co., Inc. v. CA, 164 SCRA 731 and Teague v. Fernandez, 51 SCRA 181.

[18] Paras, Civil Code of the Philippines, Annotated, 1989 ed., vol. II, p. 70; De Leon, Comments and Cases on Property, 1993 ed. p. 77; See also Article 428 of the New Civil Code which states that “The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

“The owner has also a right of action against the holder and possessor of the thing in order to recover it.”

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