

**ABELARDO LIM AND ESMADITO GUNNABAN, PETITIONERS, VS.
COURT OF APPEALS AND DONATO H. GONZALES, RESPONDENTS.***G.R. No. 125817. January 16, 2002*

Ponente: BELLOSILLO, J.

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When a passenger jeepney covered by a certificate of public convenience is sold to another who continues to operate it under the same certificate of public convenience under the so-called kabit system, and in the course thereof the vehicle meets an accident through the fault of another vehicle, may the new owner sue for damages against the erring vehicle? Otherwise stated, does the new owner have any legal personality to bring the action, or is he the real party in interest in the suit, despite the fact that he is not the registered owner under the certificate of public convenience?

Sometime in 1982 private respondent Donato Gonzales purchased an Isuzu passenger jeepney from Gomercino Vallarta, holder of a certificate of public convenience for the operation of public utility vehicles plying the Monumento-Bulacan route. While private respondent Gonzales continued offering the jeepney for public transport services he did not have the registration of the vehicle transferred in his name nor did he secure for himself a certificate of public convenience for its operation. Thus Vallarta remained on record as its registered owner and operator.

On 22 July 1990, while the jeepney was running northbound along the North Diversion Road somewhere in Meycauayan, Bulacan, it collided with a ten-wheeler-truck owned by petitioner Abelardo Lim and driven by his co-petitioner Esmadito Gunnaban. Gunnaban owned responsibility for the accident, explaining that while he was traveling towards Manila the truck suddenly lost its brakes. To avoid colliding with another vehicle, he swerved to the left until he reached the center island. However, as the center island eventually came to an end, he veered farther to the left until he smashed into a Ferroza automobile, and later, into private respondent's passenger jeepney driven by one Virgilio Gonzales. The impact caused severe damage to both the Ferroza and the passenger jeepney and left one (1) passenger dead and many others wounded.

Petitioner Lim shouldered the costs for hospitalization of the wounded, compensated the heirs of the deceased passenger, and had the Ferroza restored to good condition. He also negotiated with private respondent and offered to have the passenger jeepney repaired at his shop. Private respondent however did not accept the offer so Lim offered him P20,000.00, the assessment of the damage as estimated by his chief mechanic. Again, petitioner Lim's proposition was rejected; instead, private respondent demanded a brand-new jeep or the amount of P236,000.00. Lim increased his bid to P40,000.00 but private respondent was unyielding. Under the circumstances, negotiations had to be abandoned; hence, the filing of the complaint for damages by private respondent against petitioners.

In his answer Lim denied liability by contending that he exercised due diligence in the selection and supervision of his employees. He further asserted that as the jeepney was registered in Vallarta's name, it was Vallarta and not private respondent who was the real party in interest.[1] For his part, petitioner Gunnaban averred that the

accident was a fortuitous event which was beyond his control.[2]

Meanwhile, the damaged passenger jeepney was left by the roadside to corrode and decay. Private respondent explained that although he wanted to take his jeepney home he had no capability, financial or otherwise, to tow the damaged vehicle.[3]

The main point of contention between the parties related to the amount of damages due private respondent. Private respondent Gonzales averred that per estimate made by an automobile repair shop he would have to spend P236,000.00 to restore his jeepney to its original condition.[4] On the other hand, petitioners insisted that they could have the vehicle repaired for P20,000.00.[5]

On 1 October 1993 the trial court upheld private respondent's claim and awarded him P236,000.00 with legal interest from 22 July 1990 as compensatory damages and P30,000.00 as attorney's fees. In support of its decision, the trial court ratiocinated that as vendee and current owner of the passenger jeepney private respondent stood for all intents and purposes as the real party in interest. Even Vallarta himself supported private respondent's assertion of interest over the jeepney for, when he was called to testify, he dispossessed himself of any claim or pretension on the property. Gunnaban was found by the trial court to have caused the accident since he panicked in the face of an emergency which was rather palpable from his act of directing his vehicle to a perilous streak down the fast lane of the superhighway then across the island and ultimately to the opposite lane where it collided with the jeepney.

On the other hand, petitioner Lim's liability for Gunnaban's negligence was premised on his want of diligence in supervising his employees. It was admitted during trial that Gunnaban doubled as mechanic of the ill-fated truck despite the fact that he was neither tutored nor trained to handle such task.[6]

Forthwith, petitioners appealed to the Court of Appeals which, on 17 July 1996, affirmed the decision of the trial court. In upholding the decision of the court a quo the appeals court concluded that while an operator under the kabit system could not sue without joining the registered owner of the vehicle as his principal, equity demanded that the present case be made an exception.[7] Hence this petition.

It is petitioners' contention that the Court of Appeals erred in sustaining the decision of the trial court despite their opposition to the well-established doctrine that an operator of a vehicle continues to be its operator as long as he remains the operator of record. According to petitioners, to recognize an operator under the kabit system as the real party in interest and to countenance his claim for damages is utterly subversive of public policy. Petitioners further contend that inasmuch as the passenger jeepney was purchased by private respondent for only P30,000.00, an award of P236,000.00 is inconceivably large and would amount to unjust enrichment.[8]

Petitioners' attempt to illustrate that an affirmance of the appealed decision could be supportive of the pernicious kabit system does not persuade. Their labored efforts to demonstrate how the questioned rulings of the courts a quo are diametrically opposed to the policy of the law requiring operators of public utility vehicles to secure a certificate of public convenience for their operation is quite unavailing.

The kabit system is an arrangement whereby a person who has been granted a certificate of public convenience allows other persons who own motor vehicles to operate them under his license, sometimes for a fee or percentage of the earnings.[9] Although the parties to such an agreement are not outrightly penalized by law, the kabit system is invariably recognized as being contrary to public policy and therefore void and inexistent under Art. 1409 of the Civil Code.

In the early case of *Dizon v. Octavio*[10] the Court explained that one of the primary factors considered in the granting of a certificate of public convenience for the business of public transportation is the financial capacity of

the holder of the license, so that liabilities arising from accidents may be duly compensated. The kabit system renders illusory such purpose and, worse, may still be availed of by the grantee to escape civil liability caused by a negligent use of a vehicle owned by another and operated under his license. If a registered owner is allowed to escape liability by proving who the supposed owner of the vehicle is, it would be easy for him to transfer the subject vehicle to another who possesses no property with which to respond financially for the damage done. Thus, for the safety of passengers and the public who may have been wronged and deceived through the baneful kabit system, the registered owner of the vehicle is not allowed to prove that another person has become the owner so that he may be thereby relieved of responsibility. Subsequent cases affirm such basic doctrine.[11]

It would seem then that the thrust of the law in enjoining the kabit system is not so much as to penalize the parties but to identify the person upon whom responsibility may be fixed in case of an accident with the end view of protecting the riding public. The policy therefore loses its force if the public at large is not deceived, much less involved.

In the present case it is at once apparent that the evil sought to be prevented in enjoining the kabit system does not exist. First, neither of the parties to the pernicious kabit system is being held liable for damages. Second, the case arose from the negligence of another vehicle in using the public road to whom no representation, or misrepresentation, as regards the ownership and operation of the passenger jeepney was made and to whom no such representation, or misrepresentation, was necessary. Thus it cannot be said that private respondent Gonzales and the registered owner of the jeepney were in estoppel for leading the public to believe that the jeepney belonged to the registered owner. Third, the riding public was not bothered nor inconvenienced at the very least by the illegal arrangement. On the contrary, it was private respondent himself who had been wronged and was seeking compensation for the damage done to him. Certainly, it would be the height of inequity to deny him his right.

In light of the foregoing, it is evident that private respondent has the right to proceed against petitioners for the damage caused on his passenger jeepney as well as on his business. Any effort then to frustrate his claim of damages by the ingenuity with which petitioners framed the issue should be discouraged, if not repelled.

In awarding damages for tortuous injury, it becomes the sole design of the courts to provide for adequate compensation by putting the plaintiff in the same financial position he was in prior to the tort. It is a fundamental principle in the law on damages that a defendant cannot be held liable in damages for more than the actual loss which he has inflicted and that a plaintiff is entitled to no more than the just and adequate compensation for the injury suffered. His recovery is, in the absence of circumstances giving rise to an allowance of punitive damages, limited to a fair compensation for the harm done. The law will not put him in a position better than where he should be in had not the wrong happened.[12]

In the present case, petitioners insist that as the passenger jeepney was purchased in 1982 for only P30,000.00 to award damages considerably greater than this amount would be improper and unjustified. Petitioners are at best reminded that indemnification for damages comprehends not only the value of the loss suffered but also that of the profits which the obligee failed to obtain. In other words, indemnification for damages is not limited to *damnum emergens* or actual loss but extends to *lucrum cessans* or the amount of profit lost.[13]

Had private respondent's jeepney not met an accident it could reasonably be expected that it would have continued earning from the business in which it was engaged. Private respondent avers that he derives an average income of P300.00 per day from his passenger jeepney and this earning was included in the award of damages made by the trial court and upheld by the appeals court. The award therefore of P236,000.00 as compensatory damages is not beyond reason nor speculative as it is based on a reasonable estimate of the total damage suffered by private

respondent, i.e. damage wrought upon his jeepney and the income lost from his transportation business. Petitioners for their part did not offer any substantive evidence to refute the estimate made by the courts a quo.

However, we are constrained to depart from the conclusion of the lower courts that upon the award of compensatory damages legal interest should be imposed beginning 22 July 1990, i.e. the date of the accident. Upon the provisions of Art. 2213 of the Civil Code, interest "cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty." It is axiomatic that if the suit were for damages, unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof, interest at the rate of six percent (6%) per annum should be from the date the judgment of the court is made (at which time the quantification of damages may be deemed to be reasonably ascertained).[14]

In this case, the matter was not a liquidated obligation as the assessment of the damage on the vehicle was heavily debated upon by the parties with private respondent's demand for P236,000.00 being refuted by petitioners who argue that they could have the vehicle repaired easily for P20,000.00. In fine, the amount due private respondent was not a liquidated account that was already demandable and payable.

One last word. We have observed that private respondent left his passenger jeepney by the roadside at the mercy of the elements. Article 2203 of the Civil Code exhorts parties suffering from loss or injury to exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question. One who is injured then by the wrongful or negligent act of another should exercise reasonable care and diligence to minimize the resulting damage. Anyway, he can recover from the wrongdoer money lost in reasonable efforts to preserve the property injured and for injuries incurred in attempting to prevent damage to it.[15]

However we sadly note that in the present case petitioners failed to offer in evidence the estimated amount of the damage caused by private respondent's unconcern towards the damaged vehicle. It is the burden of petitioners to show satisfactorily not only that the injured party could have mitigated his damages but also the amount thereof; failing in this regard, the amount of damages awarded cannot be proportionately reduced.

WHEREFORE, the questioned Decision awarding private respondent Donato Gonzales P236,000.00 with legal interest from 22 July 1990 as compensatory damages and P30,000.00 as attorney's fees is MODIFIED. Interest at the rate of six percent (6%) per annum shall be computed from the time the judgment of the lower court is made until the finality of this Decision. If the adjudged principal and interest remain unpaid thereafter, the interest shall be twelve percent (12%) per annum computed from the time judgment becomes final and executory until it is fully satisfied.

Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Original Records, pp. 23-26.

[2] *Id.*, pp. 15-18.

[3] TSN, 6 February 1992, pp. 1-14.

[4] *Ibid.*

[5] See Note 1, p. 109.

- [6] Decision penned by Judge Basilio R. Gabo, RTC-Br. 11, Malolos, Bulacan; CA Rollo, pp. 41-44.
- [7] Decision penned by Associate Justice Maximiano C. Asuncion, concurred in by Associate Justices Salome A. Montoya and Godardo A. Jacinto; Rollo, pp 25-33.
- [8] Id., pp. 12-23.
- [9] Baliwag Transit Inc. v. Court of Appeals, G.R. No. 57493, 7 January 1987, 147 SCRA 82; Teja Marketing v. IAC, G.R. No. 65510, 9 March 1987, 148 SCRA 347; Lita Enterprises, Inc. v. Second Civil Cases Division, IAC, G.R. No. 64693, 27 April 1984, 129 SCRA 79.
- [10] 51 O.G. 4059 (1955).**
- [11] Santos v. Sibug, No. L-26815, 26 May 1981, 104 SCRA 520; Vargas v. Langcay, 116 Phil 478 (1962); Tamayo v. Aquino 105 Phil. 949 (1959); Erez v. Jepte, 102 Phil. 103 (1957) .
- [12] Ong v. Court of Appeals, G.R. No. 117103, 21 January 1999, 301 SCRA 387; Congregation of the Religious of the Virgin Mary v. Court of Appeals, 353 Phil 591 (1998); Llorente v. Sandiganbayan, G.R. No. 122166, 11 March 1998, 287 SCRA 382.
- [13] Magat, Jr. v. CA, G.R. No. 124221, 4 August 2000, 337 SCRA 298; Integrated Packaging Corp. v. CA, G.R. No. 115117, 8 June 2000, 333 SCRA 171; Coca-Cola Bottlers Packaging Inc., v. Henson, 367 Phil 493 (1999); Associated Realty Development Co., Inc. v. CA, No. L-18056, 30 January 1956, 13 SCRA 52.
- [14] Eastern Assurance and Surety Corporation, G.R. No. 127135, 18 January 2000, 322 SCRA 73; Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, 12 July 1994, 234 SCRA 78; Rivera v. Matute, 98 Phil 516 (1956).
- [15] Puentebella v. Negros Coal, 50 Phil 69 (1927); De Castelvi v. Compania de Tabaccos, 49 Phil 998 (1926).

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