

STANDARD-VACUUM OIL CO., PETITIONER, VS. ANITA TAN AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 13048. February 27, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

On May 3, 1949, Julito Sto. Domingo and Igmidio Rico, employees of the Standard Vacuum Oil Company (hereinafter referred to as STANVAC), were delivering gasoline from a tank trailer to the Rural Transit Co. at its garage at Rizal Avenue Extension, City of Manila. While the gasoline was being discharged to a subterranean tank, the discharge hose suddenly caught fire. It spread to the rear part of the tank truck, and as somebody shouted, "Fire, fire!" Sto. Domingo, who was then busy writing his report inside the cab of the truck, went down to investigate. He saw that his helper, Rico, had already removed the hose and closed the cap screw of the tank. Obeying the signal of Rico, who sustained burns on his face, Sto. Domingo drove out the truck from the gasoline station compound towards Rizal Avenue Extension. But upon reaching the street, he abandoned the truck without setting its parking brake. Consequently, the vehicle continued moving to the opposite side of the street causing three houses on that side—one of them belonging to Anita Tan—to be burned and destroyed.

Julito Sto. Domingo and Igmidio Rico were subsequently charged with arson through reckless imprudence in the Court of First Instance of Manila. Both were, however, acquitted after due trial because their negligence was not proven and nobody knew what caused or started the fire, it being just "an unfortunate accident."

Anita Tan then filed a complaint in the Court of First Instance of Manila against STANVAC, Julito Sto. Domingo and Igmidio Rico, seeking to recover the sum of P12,000.00 which was the cost of the construction and repair of her house, plus legal interests. This complaint was later amended to ask for actual and moral damages and to include as defendant the Rural Transit Company. Upon defendants' motion the complaint was dismissed. But on appeal, the order of dismissal was affirmed by this Court only with respect to defendants Sto. Domingo and Rico, and reversed with regard to the other two defendants. (*Anita Tan vs. Standard Vacuum Oil Co., et al.*, 91 Phil., 672.)

In the court a quo after the case had been remanded, the complaint was finally amended to include additional party defendants and to substitute the name of Rural Transit Co. with Bachrach Motor Co., Inc., it having been found that the former was but a garage and gasoline station owned and operated of the latter.

After the issues had been joined and several hearings held, the trial court rendered judgment, the dispositive part of which reads:

"In view of all the foregoing considerations, an alternative and conditional judgment is hereby rendered as follows:

"1. Under the first cause of action for culpa aquiliana, the defendants Standard Vacuum Oil Company and the Bachrach Motor Company are hereby ordered to pay the plaintiff, jointly and severally, (a) the sum of P10,630.80 for what plaintiff has spent in the reconstruction of her house No. 2540, Rizal Avenue Extension,

this City, with interest thereon at the rate of 6% per annum from January 6, 1950, the date of the filing of the original complaint in this case; (b) P2,700.00 for rentals which she failed to receive while said house was under construction; (c) P1,000.00 for moral damages; (d) fifteen percent (15%) of the amounts mentioned in (a), (b) and (c) of this paragraph for attorney's fees; and (d) to pay the costs;

"2. Under the second cause of action and in pursuance of the provisions of Art. 101, 2nd par. of the Revised Penal Code, defendants Pilar T. Bautista, Milagros G. Tinio, and the Heirs of the deceased Inocencio Gochangco, to wit, Severina L. Gochangco, Conrado Gochangco, Segundina Alcazar and Noemi G. Palma (these heirs as one), are hereby ordered to pay plaintiff the same amounts which appear in No. 1 of the dispositive part of this decision in proportion to the values of their respective properties as above set forth but, if this judgment is executed against them and they do pay, their payment shall be without prejudice to seek proportional reimbursement from defendants Gloria Posadas Arkonel and the Bachrach Motor Company, whose properties have also been saved from the conflagration;

"3. Plaintiff shall not be entitled to both of the remedies mentioned in Nos. 1 and 2 hereof, nor can the defendants in either number seek reimbursement from those in the other."

From that judgment, the two defendant companies appealed to the Court of Appeals. On September 18, 1957, that court rendered its decision absolving Bachrach Motor Co., Inc., from any liability, but affirming the appealed judgment with respect to STANVAC, with the modification that it shall pay plaintiff Anita Tan only the amount of P13,036.60, plus legal interest, STANVAC in due time filed a motion for reconsideration, but the same having been denied, it filed the present petition for review on certiorari.

The Court of Appeals in the decision complained of expressly found that "the record of the case at bar is replete with evidence showing that if the fire that gutted the house of Anita Tan was not caused by Sto. Domingo's and Rico's criminal negligence, evidently it was so caused by their fault and lack of equanimity in the presence of the fire which suddenly and for unknown reasons sparked in the discharge hose and which could have been put out by the proper and opportune use of the fire extinguishers with which the tank-trailer was equipped." It also found that there was negligence on the part of the employer, herein petitioner STANVAC itself, in the direction or supervision of its two employees. To better show the acts or omissions constituting the fault or negligence of petitioner and its two employees, the pertinent portion of the decision of the Court of Appeals is hereunder quoted as follows:

"It is admitted that the Rural Transit Station had a shaded portion and an open cemented space. The main opening of its subterranean tank was nearer the shaded part than Rizal Avenue Extension. It is presumed that during the discharge operation the tank-trailer was parked in the middle of the open space which had an area of 65 feet by 55 feet (Exh. 'Q'). Hence had the tank-trailer truck been left in that open space, appellee's house would not have been burned nor would an explosion of the underground tank have occurred because, according to Sto. Domingo himself, when he drove the truck out to the street, Rico had already removed the hose from the opening of said tank and closed it with the cap screw (t.s.n., p. 100 Santiago). This conclusion is fully sustained by then Acting Deputy Chief of the Manila Fire Department, Braulio Aloña who, when asked if the subterranean tank would have exploded had not the tank-trailer been removed from the place where it caught fire, categorically answered, 'No, señor, no explotaria.' (t.s.n., p. 9—Quimpo.)

"It is likewise admitted that the two fire extinguishers which the tank-trailer carried (appellant's brief, p. 24), were not detached and put to use by Sto. Domingo and Rico. Instead, in open violation of condition No. 8 of the Permit for the Transportation of Combustible by Tank Truck (Exh. 'X-2')—which provides that 'Whenever refilling or filling work is conducted, fire extinguisher must be on hand and readied for fire emergency by an experienced operator until the fill or discharge operation is completed'—Sto. Domingo went into the cab of the truck to write his report while Rico watched with empty hands the unloading of the gasoline. Had both employees of appellant oil company complied with the condition just quoted by closely observing the

discharge operation with the fire extinguishers in their hands ready for use, they could have used these instruments instantly and would certainly have been able to put out the spark that ignited the hose during the discharge operation—just as the foreman of Rural Transit Station succeeded in putting out the fire at the mouth of the underground tank by the proper usage of the station's only extinguisher.

"The above transcribed condition speaks of an 'experienced operator', who must use and operate the fire extinguisher. Yet, Sto. Domingo, who, according to appellant's evidence, had some training and took periodic refresher courses on the proper way of making delivery of its highly inflammable products by means of tank trailer, including the use and operation of the fire extinguisher, did not personally attend to the discharge of the gasoline but entrusted this very delicate and most risky task to Igmidio Rico, who had no training at all—or if he had some, it was not proven during the trial.

"While the discharge of the gasoline to the underground tank was undertaken, there were many persons waiting for the passenger truck 'about two or three meters' from the tank-trailer truck, milling about it (t.s.n., pp. 9 and 10—Garcia). Even Sto. Domingo admitted that when he stopped writing and turned around because of the shout of 'fire, fire!' he saw a woman at the left side of his truck who ran towards a bus inside the Rural Transit garage (Exh. 'N-2'). It was indeed lack of foresight, bordering on culpable negligence, on the part of Sto. Domingo and Rico to have allowed many persons to roam around near the tank-trailer while the discharge of the gasoline was under way, considering the high volatility and inflammability of this liquid.

"Sixta Lazaro, who lived directly across the street from the Rural Transit Station, declared: 'On May 3, 1949 between 3 and 3:30 o'clock in the afternoon I was picking clothes stretched under the sun and I heard somebody shouting "sunog, sunog" ("fire, fire"). When I turned my head to look at the direction from which the shout came, I saw inside the garage of the Rural Transit Company a green truck discharging gasoline, with the rear part already aflame. I went to our bathroom to see better what was happening. I saw the driver started the truck perhaps to drive it out from the premises but before the truck reached the street the driver jump out from his seat. I saw the truck coming right to the direction of our house so I picked up my boy about two years old and I went downstairs. We have just reached downstairs when I heard the truck was jumbed at the ditch in front of our house.' (t.s.n., pp. 21 and 22, Garcia). According to this witness, after the driver jumped out, 'the truck continued in motion' (t.s.n., p. 26—Garcia and the flame at the rear part of the truck was still 'about one foot high from the bottom of the tank', (t.s.n., p. 28—Garcia) in a place marked as circle 1 in Exhibit 'D'. Evidently, Sto. Domingo was seized with panic and abandoned the truck without setting its parking brake and without using the extinguisher which was 'placed on the usual place on the side of the truck' (t.s.n., p. 25—Garcia). Had he stopped the truck on the western side of Rizal Avenue Extension and operated the fire extinguisher instead of running away from the scene of occurrence, most probably he could have checked the lire and prevented the burning of appellee's house, because even at that moment the fire in the rear part of the tank-trailer was only about one foot high.

"The facts narrated in the five preceding paragraphs prove that the employees of appellant oil company did not exercise special care and diligence required by the exceptional character of the work they were undertaking on May 3, 1949, in the ordinary course of their employment in the service of appellant oil company.

"Another equally unmeritorious contention of appellant oil company is that the trial court erred in holding that this appellant was negligent in not having appropriately instructed its employees.

"It is of common knowledge that gasoline is a highly volatile and combustible liquid. For this reason, aside from the requirements that tank-trailers should have drag chains or other flexible metallic devices long enough to reach the ground; that it should use only electric lights with fuses or automatic circuit breakers; that smoking is absolutely prohibited during deliveries or when the tank is being filled; and others (Exh. 'K—2'), the owners or sellers of said liquid must properly instruct their laborers and employees charged with the delivery or handling of the liquid on how to manipulate the fire extinguishers so that they may instantly put out any spark. They should likewise be given the location of the nearest fire alarm for immediate notification of the fire

department if the spark assumes proportions greater than can be extinguished by the small hand apparatus. It has not been shown that Igmidio Rico received any such instruction or training from appellant; and Julito Sto. Domingo, who underwent some training, testified that during his training period and three years of service, he was not instructed on the usage and shown the locations of the fire alarms in the vicinity of the stations where he used to deliver gasoline, neither was he given by appellant any sketch or map to show the location of said fire alarms (t.s.n., pp. 31 and 32—Boaquina). Thus, he was not able to locate any fire alarm during his ten-minute laborious search. Had an early warning from Sto. Domingo been received by the fire department, the destruction of appellee's house might have been prevented by the prompt action of the firemen.

"On the other hand, appellant oil company knew of the practice of Sto. Domingo of writing his reports in the cab of the truck during discharge operations, and yet appellant oil company did not advise him against it, nor prohibit him from doing it (t.s.n., pp. 60, 63 and 64—Santiago). Had appellant ordered Sto. Domingo to stop this practice and instructed him to personally attend to the discharge of the gasoline with the fire extinguisher ready, he would indubitably have been able to check the fire at its inception, taking into account his special training which Rico did not have.

"Obviously, those considerations frustrate appellant's attempt to exculpate itself, under the last paragraph of Article 1903 of the old Civil Code, by trying to futilely prove that it exercised the diligence of a good father of a family to prevent the damage to appellee's property."

Counsel, for petitioner STANVAC contends that since its employees Sto. Domingo and Rico had previously been found by competent court to be not negligent—referring to the court acquitting them in the criminal case for arson thru reckless imprudence—said petitioner cannot now be held liable for damages. The contention, in our opinion, cannot be sustained. It is admitted that respondent Anita Tan sought to hold STANVAC liable under Articles 1902 and 1903 of the old Civil Code, the law in force at the time the fire in question occurred. Under those articles, the liability of the employer is primary and direct, based upon his own negligence (*culpa aquiliana*) and not on that of his employees or servants. (*Cangco vs. Manila Railroad Co.*, 38 Phil., 768.) The present proceeding, therefore, is entirely unrelated to the judgment in the criminal case where petitioner's two employees were acquitted because their criminal negligence was not proved and the cause of the fire could not be determined. Parenthetically, after the trial court had ordered the dismissal of respondent Anita Tan's complaint, this Court on appeal reversed that order as to STANVAC and authorized the proceedings against said company, which was sued "not precisely because of the negligent acts of its two employees but because of acts of its own which might have contributed to the fire that destroyed the house of plaintiff (herein respondent Anita Tan)." Continuing, this Court further observed that—

"* * * The complaint contains definite allegations of negligent acts properly attributable to the company which if proven and not refuted may serve as basis of its civil liability. Thus, in paragraph 5 of the first cause of action, it is expressly alleged that this company, through its employees, failed to take the necessary precautions or measures to insure safety and avoid harm to persons and damage to property as well as to observe that degree of care, precaution and vigilance which the circumstances justly demanded, thereby causing the gasoline they were unloading to catch fire. The precautions or measures which this company has allegedly failed to take to prevent fire are not clearly stated, but they are matters of evidence which need not now be determined. Suffice it to say, that such allegation furnishes enough basis for a cause of action against this company. * * *."

Taking great pains in minutely scrutinizing the allegations in the complaint, counsel for petitioner avers that STANVAC was merely referred to therein as the employer and was not at all charged with negligence. Be that as it may, it is undisputed that no objection was made to the presentation of evidence as to the negligent acts of STANVAC during the trial of the case. As a matter of fact, it even tried to overcome that evidence by introducing evidence of its own tending to show that it had employed the diligence of a good father of a family to prevent the

damage. The issue, therefore, regarding the negligence of petitioner STANVAC—even assuming that the complaint does not really contain allegations of negligent acts properly attributable to it—must be considered as if it had been raised in the pleadings. And the Court of Appeals, whose factual findings are final and conclusive upon this Court, having found that petitioner company did fail to take necessary precautions or measures to prevent fire, and that the fire that destroyed respondent Anita Tan's house could have been avoided had petitioner exercised due care in the supervision or control of its employees, the appellate court's ruling on its liability cannot now be disturbed.

In view of the foregoing, the decision sought to be reviewed is hereby affirmed, with costs against petitioner.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Barrera, JJ., concur.

Padilla, J., took no part.

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