CASTILEX INDUSTRIAL CORPORATION, PETITIONER, VS. VICENTE VASQUEZ, JR. AND LUISA SO VASQUEZ, AND CEBU DOCTORS' HOSPITAL, INC., RESPONDENTS.

G.R. No. 132266. December 21, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

The pivotal issue in this petition is whether an employer may be held vicariously liable for the death resulting from the negligent operation by a managerial employee of a company-issued vehicle.

The antecedents, as succinctly summarized by the Court of Appeals, are as follows:

> On 28 August 1988, at around 1:30 to 2:00 in the morning, Romeo So Vasquez, was driving a Honda motorcycle around Fuente Osmeña Rotunda. He was traveling counter-clockwise, (the normal flow of traffic in a rotunda) but without any protective helmet or goggles. He was also only carrying a Student's Permit to Drive at the time. Upon the other hand, Benjamin Abad [was a] manager of Appellant Castilex Industrial Corporation, registered owner [of] a Toyota Hi-Lux Pick-up with plate no. GBW-794. On the same date and time, Abad drove the said company car out of a parking lot but instead of going around the Osmeña rotunda he made a short cut against [the] flow of the traffic in proceeding to his route to General Maxilom St. or to Belvic St.
>
> In the process, the motorcycle of Vasquez and the pick-up of Abad collided with each other causing severe injuries to the former. Abad stopped his vehicle and brought Vasquez to the Southern Islands Hospital and later to the Cebu Doctor's Hospital.
>
> On September 5, 1988, Vasquez died at the Cebu Doctor's Hospital. It was there that Abad signed an acknowledgment of Responsible Party (Exhibit K) wherein he agreed to pay whatever hospital bills, professional fees and other incidental charges Vasquez may incur.
>
> After the police authorities had conducted the investigation of the accident, a Criminal Case was filed against Abad but which was subsequently dismissed for failure to prosecute. So, the present action for damages was commenced by Vicente Vasquez, Jr. and Luisa So Vasquez, parents of the deceased Romeo So Vasquez, against Jose Benjamin Abad and Castilex Industrial Corporation. In the same action, Cebu Doctor's Hospital intervened to collect unpaid balance for the medical expense given to Romeo So Vasquez.[1]

The trial court ruled in favor of private respondents Vicente and Luisa Vasquez and ordered Jose Benjamin Abad (hereafter ABAD) and petitioner Castilex Industrial Corporation (hereafter CASTILEX) to pay jointly and solidarily (1) Spouses Vasquez, the amounts of P8,000.00 for burial expenses; P50,000.00 as moral damages; P10,000.00 as attorney's fees; and P778,752.00 for loss of earning capacity; and (2) Cebu Doctor's Hospital, the sum of P50,927.83 for unpaid medical and hospital bills at 3% monthly interest from 27 July 1989 until fully paid, plus the costs of litigation.[2]

CASTILEX and ABAD separately appealed the decision.

In its decision[3] of 21 May 1997, the Court of Appeals affirmed the ruling of the trial court holding ABAD and CASTILEX liable but held that the liability of the latter is "only vicarious and not solidary" with the former. It reduced the award of damages representing loss of earning capacity from P778,752.00 to P214,156.80; and the interest on the hospital and medical bills, from 3% per month to 12% per annum from 5 September 1988 until fully paid.

Upon CASTILEX's motion for reconsideration, the Court of Appeals modified its decision by (1) reducing the award of moral damages from P50,000 to P30,000 in view of the deceased's contributory negligence; (b) deleting the award of attorney's fees for lack of evidence; and (c) reducing the interest on hospital and medical bills to 6% per annum from 5 September 1988 until fully paid.[4]

Hence, CASTILEX filed the instant petition contending that the Court of Appeals erred in (1) applying to the case the fifth paragraph of Article 2180 of the Civil Code, instead of the fourth paragraph thereof; (2) that as a managerial employee, ABAD was deemed to have been always acting within the scope of his assigned task even outside office hours because he was using a vehicle issued to him by petitioner; and (3) ruling that petitioner had the burden to prove that the employee was not acting within the scope of his assigned task.

Jose Benjamin ABAD merely adopted the statement of facts of petitioner which holds fast on the theory of negligence on the part of the deceased.

On the other hand, respondents Spouses Vasquez argue that their son's death was caused by the negligence of petitioner's employee who was driving a vehicle issued by petitioner and who was on his way home from overtime work for petitioner; and that petitioner is thus liable for the resulting injury and subsequent death of their son on the basis of the fifth paragraph of Article 2180. Even if the fourth paragraph of Article 2180 were applied, petitioner cannot escape liability therefor. They moreover argue that the Court of Appeals erred in reducing the amount of compensatory damages when the award made by the trial court was borne both by evidence adduced during the trial regarding deceased's wages and by jurisprudence on life expectancy. Moreover, they point out that the petition is procedurally not acceptable on the following grounds: (1) lack of an explanation for serving the petition upon the Court of Appeals by registered mail, as required under Section 11, Rule 13 of the Rules of Civil Procedure; and (2) lack of a statement of the dates of the expiration of the original reglementary period and of the filing of the motion for extension of time to file a petition for review.

For its part, respondent Cebu Doctor's Hospital maintains that petitioner CASTILEX is indeed vicariously liable for the injuries and subsequent death of Romeo Vasquez caused by ABAD, who was on his way home from taking snacks after doing overtime work for petitioner. Although the incident occurred when ABAD was not working anymore "the inescapable fact remains that said employee would not have been situated at such time and place had he not been required by petitioner to do overtime work." Moreover, since petitioner adopted the evidence adduced by ABAD, it cannot, as the latter's employer, inveigle itself from the ambit of liability, and is thus estopped by the records of the case, which it failed to refute.

We shall first address the issue raised by the private respondents regarding some alleged procedural lapses in the petition.

Private respondent's contention of petitioner's violation of Section 11 of Rule 13 and Section 4 of Rule 45 of the 1997 Rules of Civil Procedure holds no water.

> Section 11 of Rule 13 provides:
>
> SEC. 11. Priorities in modes of service and filing. -- Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to

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> other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

The explanation why service of a copy of the petition upon the Court of Appeals was done by registered mail is found on Page 28 of the petition. Thus, there has been compliance with the aforequoted provision.

As regards the allegation of violation of the material data rule under Section 4 of Rule 45, the same is unfounded. The material dates required to be stated in the petition are the following: (1) the date of receipt of the judgment or final order or resolution subject of the petition; (2) the date of filing of a motion for new trial or reconsideration, if any; and (3) the date of receipt of the notice of the denial of the motion. Contrary to private respondent's claim, the petition need not indicate the dates of the expiration of the original reglementary period and the filing of a motion for extension of time to file the petition. At any rate, aside from the material dates required under Section 4 of Rule 45, petitioner CASTILEX also stated in the first page of the petition the date it filed the motion for extension of time to file the petition.

Now on the merits of the case.

The negligence of ABAD is not an issue at this instance. Petitioner CASTILEX presumes said negligence but claims that it is not vicariously liable for the injuries and subsequent death caused by ABAD.

Petitioner contends that the fifth paragraph of Article 2180 of the Civil Code should only apply to instances where the employer is not engaged in business or industry. Since it is engaged in the business of manufacturing and selling furniture it is therefore not covered by said provision. Instead, the fourth paragraph should apply.

Petitioner's interpretation of the fifth paragraph is not accurate. The phrase "even though the former are not engaged in any business or industry" found in the fifth paragraph should be interpreted to mean that it is not necessary for the employer to be engaged in any business or industry to be liable for the negligence of his employee who is acting within the scope of his assigned task.[5]

A distinction must be made between the two provisions to determine what is applicable. Both provisions apply to employers: the fourth paragraph, to owners and managers of an establishment or enterprise; and the fifth paragraph, to employers in general, whether or not engaged in any business or industry. The fourth paragraph covers negligent acts of employees committed either in the service of the branches or on the occasion of their functions, while the fifth paragraph encompasses negligent acts of employees acting within the scope of their assigned task. The latter is an expansion of the former in both employer coverage and acts included. Negligent acts of employees, whether or not the employer is engaged in a business or industry, are covered so long as they were acting within the scope of their assigned task, even though committed neither in the service of the branches nor on the occasion of their functions. For, admittedly, employees oftentimes wear different hats. They perform functions which are beyond their office, title or designation but which, nevertheless, are still within the call of duty.

This court has applied the fifth paragraph to cases where the employer was engaged in a business or industry such as truck operators[6] and banks.[7] The Court of Appeals cannot, therefore, be faulted in applying the said paragraph of Article 2180 of the Civil Code to this case.

Under the fifth paragraph of Article 2180, whether or not engaged in any business or industry, an employer is liable for the torts committed by employees within the scope of his assigned tasks. But it is necessary to establish the employer-employee relationship; once this is done, the plaintiff must show, to hold the employer liable, that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the employer may find it necessary to interpose the defense of due diligence in the selection and

supervision of the employee.[8]

It is undisputed that ABAD was a Production Manager of petitioner CASTILEX at the time of the tort occurrence. As to whether he was acting within the scope of his assigned task is a question of fact, which the court a quo and the Court of Appeals resolved in the affirmative.

Well-entrenched in our jurisprudence is the rule that the factual findings of the Court of Appeals are entitled to great respect, and even finality at times. This rule is, however, subject to exceptions such as when the conclusion is grounded on speculations, surmises, or conjectures.[9] Such exception obtain in the present case to warrant review by this Court of the finding of the Court of Appeals that since ABAD was driving petitioner's vehicle he was acting within the scope of his duties as a manager.

Before we pass upon the issue of whether ABAD was performing acts within the range of his employment, we shall first take up the other reason invoked by the Court of Appeals in holding petitioner CASTILEX vicariously liable for ABAD's negligence, i.e., that the petitioner did not present evidence that ABAD was not acting within the scope of his assigned tasks at the time of the motor vehicle mishap. Contrary to the ruling of the Court of Appeals, it was not incumbent upon the petitioner to prove the same. It was enough for petitioner CASTILEX to deny that ABAD was acting within the scope of his duties; petitioner was not under obligation to prove this negative averment. Ei incumbit probatio qui dicit, non qui negat (He who asserts, not he who denies, must prove). The Court has consistently applied the ancient rule that if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts which he bases his claim, the defendant is under no obligation to prove his exception or defense.[10]

Now on the issue of whether the private respondents have sufficiently established that ABAD was acting within the scope of his assigned tasks.

ABAD, who was presented as a hostile witness, testified that at the time of the incident, he was driving a company-issued vehicle, registered under the name of petitioner. He was then leaving the restaurant where he had some snacks and had a chat with his friends after having done overtime work for the petitioner.

No absolutely hard and fast rule can be stated which will furnish the complete answer to the problem of whether at a given moment, an employee is engaged in his employer's business in the operation of a motor vehicle, so as to fix liability upon the employer because of the employee's action or inaction; but rather, the result varies with each state of facts.[11]

In Filamer Christian Institute v. Intermediate Appellate Court,[12] this Court had the occasion to hold that acts done within the scope of the employee's assigned tasks includes "any act done by an employee in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damages."

The court a quo and the Court of Appeals were one in holding that the driving by a manager of a company-issued vehicle is within the scope of his assigned tasks regardless of the time and circumstances.

We do not agree. The mere fact that ABAD was using a service vehicle at the time of the injurious incident is not of itself sufficient to charge petitioner with liability for the negligent operation of said vehicle unless it appears that he was operating the vehicle within the course or scope of his employment.

The following are principles in American Jurisprudence on the employer's liability for the injuries inflicted by the negligence of an employee in the use of an employer's motor vehicle:

I. Operation of Employer's Motor Vehicle in Going to or from Meals

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It has been held that an employee who uses his employer's vehicle in going from his work to a place where he intends to eat or in returning to work from a meal is not ordinarily acting within the scope of his employment in the absence of evidence of some special business benefit to the employer. Evidence that by using the employer's vehicle to go to and from meals, an employee is enabled to reduce his time-off and so devote more time to the performance of his duties supports the finding that an employee is acting within the scope of his employment while so driving the vehicle.[13]

II. Operation of Employer's Vehicle in Going to or from Work

In the same vein, traveling to and from the place of work is ordinarily a personal problem or concern of the employee, and not a part of his services to his employer. Hence, in the absence of some special benefit to the employer other than the mere performance of the services available at the place where he is needed, the employee is not acting within the scope of his employment even though he uses his employer's motor vehicle.[14]

The employer may, however, be liable where he derives some special benefit from having the employee drive home in the employer's vehicle as when the employer benefits from having the employee at work earlier and, presumably, spending more time at his actual duties. Where the employee's duties require him to circulate in a general area with no fixed place or hours of work, or to go to and from his home to various outside places of work, and his employer furnishes him with a vehicle to use in his work, the courts have frequently applied what has been called the "special errand" or "roving commission" rule, under which it can be found that the employee continues in the service of his employer until he actually reaches home. However, even if the employee be deemed to be acting within the scope of his employment in going to or from work in his employer's vehicle, the employer is not liable for his negligence where at the time of the accident, the employee has left the direct route to his work or back home and is pursuing a personal errand of his own.

III. Use of Employer's Vehicle Outside Regular Working Hours

An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employee's negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employee's negligent operation of the vehicle during the return trip.[15]

The foregoing principles and jurisprudence are applicable in our jurisdiction albeit based on the doctrine of respondeat superior, not on the principle of bonus pater familias as in ours. Whether the fault or negligence of the employee is conclusive on his employer as in American law or jurisprudence, or merely gives rise to the presumption juris tantum of negligence on the part of the employer as in ours, it is indispensable that the employee was acting in his employer's business or within the scope of his assigned task.[16]

In the case at bar, it is undisputed that ABAD did some overtime work at the petitioner's office, which was located in Cabangcalan, Mandaue City. Thereafter, he went to Goldie's Restaurant in Fuente Osmeña, Cebu City, which is about seven kilometers away from petitioner's place of business.[17] A witness for the private respondents, a sidewalk vendor, testified that Fuente Osmeña is a "lively place" even at dawn because Goldie's Restaurant and Back Street were still open and people were drinking thereat. Moreover, prostitutes, pimps, and drug addicts littered the place.[18]

At the Goldie's Restaurant, ABAD took some snacks and had a chat with friends. It was when ABAD was leaving the restaurant that the incident in question occurred. That same witness for the private respondents

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testified that at the time of the vehicular accident, ABAD was with a woman in his car, who then shouted: "Daddy, Daddy!"[19] This woman could not have been ABAD's daughter, for ABAD was only 29 years old at the time.

To the mind of this Court, ABAD was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident. It was then about 2:00 a.m. of 28 August 1988, way beyond the normal working hours. ABAD's working day had ended; his overtime work had already been completed. His being at a place which, as petitioner put it, was known as a "haven for prostitutes, pimps, and drug pushers and addicts," had no connection to petitioner's business; neither had it any relation to his duties as a manager. Rather, using his service vehicle even for personal purposes was a form of a fringe benefit or one of the perks attached to his position.

Since there is paucity of evidence that ABAD was acting within the scope of the functions entrusted to him, petitioner CASTILEX had no duty to show that it exercised the diligence of a good father of a family in providing ABAD with a service vehicle. Thus, justice and equity require that petitioner be relieved of vicarious liability for the consequences of the negligence of ABAD in driving its vehicle.[20]

WHEREFORE, the petition is GRANTED, and the appealed decision and resolution of the Court of Appeals is AFFIRMED with the modification that petitioner Castilex Industrial Corporation be absolved of any liability for the damages caused by its employee, Jose Benjamin Abad.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 44-45.

[2] Per Judge Pedro T. Garcia. Rollo, 58-75.

[3] Per Vasquez, C. Jr., J., with De Pano, N., and Salas, B. Jr., JJ., concurring. Rollo, 44-51.

[4] Rollo, 56.

[5] V Arturo M. Tolentino, Civil Code of the Philippines 615 (1992).

[6] Lanuzo v. Ping, 100 SCRA 205, 209-210 [1980]; Layugan v. Intermediate Appellate Court, 167 SCRA 363, 377 [1988].

[7] Pacific Banking Corporation v. Court of Appeals, 173 SCRA 102, 117 [1989]; Go v. Intermediate Appellate Court, 197 SCRA 22, 31 [1991]

[8] Martin v. Court of Appeals, 205 SCRA 591 [1992]; Metro Manila Transit Corp. v. Court of Appeals, 223 SCRA 521, 539 [1993].

[9] Layugan v. IAC, supra note 6, at 370-371; Vda. de Alcantara v. Court of Appeals, 252 SCRA 457, 468 [1996]

[10] Belen v. Belen, 13 Phil. 202, 206 [1909], cited in Martin v. Court of Appeals, supra note 8.

[11] 7A AM. JUR. 2D AUTOMOBILES AND HIGHWAY TRAFFIC §687 (1980).

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[12] 212 SCRA 637, 643 [1992].

[13] 7A AM. JUR. 2D AUTOMOBILES AND HIGHWAY TRAFFIC §699.

[14] Id., §700.

[15] 7A AM. JUR. 2D AUTOMOBILES AND HIGHWAY TRAFFIC §698.

[16] 2 Cezar S. Sangco, Philippine Law On Torts And Damages 573 (1993) [Hereafter 2 Sangco].

[17] TSN, 9 July 1991, 2-3, 13.

[18] TSN, 10 October 1989, 3; 7 August 1989, 8, 10.

[19] TSN, 7 August 1989, 7-8.

[20] 2 SANGCO 573.

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