

HERMANA R. CEREZO, PETITIONER, VS. DAVID TUAZON, RESPONDENT.*G.R. No. 141538. March 23, 2004*

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141538/>**CARPIO, J.:**

This is a petition for review on certiorari[1] to annul the Resolution[2] dated 21 October 1999 of the Court of Appeals in CA-G.R. SP No. 53572, as well as its Resolution dated 20 January 2000 denying the motion for reconsideration. The Court of Appeals denied the petition for annulment of the Decision[3] dated 30 May 1995 rendered by the Regional Trial Court of Angeles City, Branch 56 (“trial court”), in Civil Case No. 7415. The trial court ordered petitioner Hermana R. Cerezo (“Mrs. Cerezo”) to pay respondent David Tuazon (“Tuazon”) actual damages, loss of earnings, moral damages, and costs of suit.

Antecedent Facts

Around noontime of 26 June 1993, a Country Bus Lines passenger bus with plate number NYA 241 collided with a tricycle bearing plate number TC RV 126 along Captain M. Palo Street, Sta. Ines, Mabalacat, Pampanga. On 1 October 1993, tricycle driver Tuazon filed a complaint for damages against Mrs. Cerezo, as owner of the bus line, her husband Attorney Juan Cerezo (“Atty. Cerezo”), and bus driver Danilo A. Foronda (“Foronda”). The complaint alleged that:

- At the time of the incident, plaintiff [Tuazon] was in his proper lane when the second-named defendant [Foronda], being then the driver and person in charge of the Country Bus with plate number NYA 241, did then and there willfully, unlawfully, and feloniously operate the said motor vehicle in a negligent, careless, and imprudent manner without due regard to traffic rules and regulations, there being a “Slow Down” sign near the scene of the incident, and without taking the necessary precaution to prevent loss of lives or injuries, his negligence, carelessness and imprudence resulted to severe damage to the tricycle and serious physical injuries to plaintiff thus making him unable to walk and becoming disabled, with his thumb and middle finger on the left hand being cut.][4]

On 1 October 1993, Tuazon filed a motion to litigate as a pauper. Subsequently, the trial court issued summons against Atty. Cerezo and Mrs. Cerezo (“the Cerezo spouses”) at the Makati address stated in the complaint. However, the summons was returned unserved on 10 November 1993 as the Cerezo spouses no longer held office nor resided in Makati. On 18 April 1994, the trial court issued alias summons against the Cerezo spouses at their address in Barangay Sta. Maria, Camiling, Tarlac. The alias summons and a copy of the complaint were finally served on 20 April 1994 at the office of Atty. Cerezo, who was then working as Tarlac Provincial Prosecutor. Atty. Cerezo reacted angrily on learning of the service of summons upon his person. Atty. Cerezo allegedly told Sheriff William Canlas: “Punyeta, ano ang gusto mong mangyari? Gusto mong hindi ka makalabas ng buhay dito? Teritoryo ko ito. Wala ka sa teritoryo mo.”[5]

The records show that the Cerezo spouses participated in the proceedings before the trial court. The Cerezo spouses filed a comment with motion for bill of particulars dated 29 April 1994 and a reply to opposition to comment with motion dated 13 June 1994.[6] On 1 August 1994, the trial court issued an order directing the Cerezo spouses to file a comment to the opposition to the bill of particulars. Atty. Elpidio B. Valera (“Atty. Valera”) of Valera and Valera Law Offices appeared on behalf of the Cerezo spouses. On 29 August 1994, Atty. Valera filed an urgent ex-parte motion praying for the resolution of Tuazon’s motion to litigate as a pauper and for the issuance of new summons on the Cerezo spouses to satisfy proper service in accordance with the Rules of Court.[7]

On 30 August 1994, the trial court issued an order resolving Tuazon’s motion to litigate as a pauper and the Cerezo spouses’ urgent ex-parte motion. The order reads:

At the hearing on August 30, 1994, the plaintiff [Tuazon] testified that he is presently jobless; that at the time of the filing of this case, his son who is working in Malaysia helps him and sends him once in a while P300.00 a month, and that he does not have any real property. Attached to the Motion to Litigate as Pauper are his Affidavit that he is unemployed; a Certification by the Barangay Captain of his poblacion that his income is not enough for his family’s subsistence; and a Certification by the Office of the Municipal Assessor that he has no landholding in the Municipality of Mabalacat, Province of Pampanga.

The Court is satisfied from the un rebutted testimony of the plaintiff that he is entitled to prosecute his complaint in this case as a pauper under existing rules.

On the other hand, the Court denies the prayer in the Appearance and Urgent Ex-Parte Motion requiring new summons to be served to the defendants. The Court is of the opinion that any infirmity in the service of the summons to the defendant before plaintiff was allowed to prosecute his complaint in this case as a pauper has been cured by this Order.

If within 15 days from receipt of this Order, the defendants do not question on appeal this Order of this Court, the Court shall proceed to resolve the Motion for Bill of Particulars.[8]

On 27 September 1994, the Cerezo spouses filed an urgent ex-parte motion for reconsideration. The trial court denied the motion for reconsideration.

On 14 November 1994, the trial court issued an order directing the Cerezo spouses to file their answer within fifteen days from receipt of the order. The Cerezo spouses did not file an answer. On 27 January 1995, Tuazon filed a motion to declare the Cerezo spouses in default. On 6 February 1995, the trial court issued an order declaring the Cerezo spouses in default and authorizing Tuazon to present his evidence. [9]

On 30 May 1995, after considering Tuazon’s testimonial and documentary evidence, the trial court ruled in Tuazon’s favor. The trial court made no pronouncement on Foronda’s liability because there was no service of summons on him. The trial court did not hold Atty. Cerezo liable as Tuazon failed to show that Mrs. Cerezo’s business benefited the family, pursuant to Article 121(3) of the Family Code. The trial court held Mrs. Cerezo solely liable for the damages sustained by Tuazon arising from the negligence of Mrs. Cerezo’s employee, pursuant to Article 2180 of the Civil Code. The dispositive portion of the trial court’s decision reads:

WHEREFORE, judgment is hereby rendered ordering the defendant Hermana Cerezo to pay the plaintiff:

a)

For Actual Damages

1) Expenses for operation and medical

treatment -

- P69,485.35

2) Cost of repair of the tricycle

- 39,921.00

b)

For loss of earnings

- 43,300.00

c)

For moral damages

- 20,000.00

d)

And to pay the cost of the suit.

The docket fees and other expenses in the filing of this suit shall be lien on whatever judgment may be rendered in favor of the plaintiff.

SO ORDERED.[10]

Mrs. Cerezo received a copy of the decision on 25 June 1995. On 10 July 1995, Mrs. Cerezo filed before the trial court a petition for relief from judgment on the grounds of “fraud, mistake or excusable negligence.” Testifying before the trial court, both Mrs. Cerezo and Atty. Valera denied receipt of notices of hearings and of orders of the court. Atty. Valera added that he received no notice before or during the 8 May 1995 elections, “when he was a senatorial candidate for the KBL Party, and very busy, using his office and residence as Party National Headquarters.” Atty. Valera claimed that he was able to read the decision of the trial court only after Mrs. Cerezo sent him a copy.[11]

Tuazon did not testify but presented documentary evidence to prove the participation of the Cerezo spouses in the case. Tuazon presented the following exhibits:

Exhibit 1 -

Sheriff’s return and summons;

Exhibit 1-A -

Alias summons dated April 20, 1994;

Exhibit 2 -

Comment with Motion;

Exhibit 3 -

Minutes of the hearing held on August 1, 1994;

Exhibit 3-A -

Signature of defendant's counsel;

Exhibit 4 -

Minutes of the hearing held on August 30, 1994;

Exhibit 4-A -

Signature of the defendant's counsel;

Exhibit 5 -

Appearance and Urgent Ex-Parte Motion;

Exhibit 6 -

Order dated November 14, 1994;

Exhibit 6-A -

Postal certification dated January 13, 1995;

Exhibit 7 -

Order dated February [illegible];

Exhibit 7-A -

Court's return slip addressed to Atty. Elpidio

Valera;

Exhibit 7-B -

Court's return slip addressed to Spouses Juan

and Hermana Cerezo;

Exhibit 8 -

Decision dated May [30], 1995

Exhibit 8-A -

Court's return slip addressed to defendant

Hermana Cerezo;

Exhibit 8-B -

Court's return slip addressed to defendant's

counsel, Atty. Elpidio Valera;

Exhibit 9 -

Order dated September 21, 1995;

Exhibit 9-A -

Second Page of Exhibit 9;

Exhibit 9-B -

Third page of Exhibit 9;

Exhibit 9-C -

Fourth page of Exhibit 9;

Exhibit 9-D -

Court's return slip addressed to Atty. Elpidio

Valera; and

Exhibit 9-E -

Court's return slip addressed to plaintiff's

counsel, Atty. Norman Dick de Guzman.[12]

On 4 March 1998, the trial court issued an order[13] denying the petition for relief from judgment. The trial court stated that having received the decision on 25 June 1995, the Cerezo spouses should have filed a notice of appeal instead of resorting to a petition for relief from judgment. The trial court refused to grant relief from judgment because the Cerezo spouses could have availed of the remedy of appeal. Moreover, the Cerezo spouses not only failed to prove fraud, accident, mistake or excusable negligence by conclusive evidence, they also failed to prove that they had a good and substantial defense. The trial court noted that the Cerezo spouses failed to appeal because they relied on an expected settlement of the case.

The Cerezo spouses subsequently filed before the Court of Appeals a petition for certiorari under Section 1 of Rule 65. The petition was docketed as CA-G.R. SP No. 48132.[14] The petition questioned whether the trial court acquired jurisdiction over the case considering there was no service of summons on Foronda, whom the Cerezo spouses claimed was an indispensable party. In a resolution[15] dated 21 January 1999, the Court of Appeals denied the petition for certiorari and affirmed the trial court's order denying the petition for relief from judgment. The Court of Appeals declared that the Cerezo spouses' failure to file an answer was due to their own negligence, considering that they continued to participate in the proceedings without filing an answer. There was also nothing in the records to show that the Cerezo spouses actually offered a reasonable settlement to Tuazon. The Court of Appeals also denied Cerezo spouses' motion for reconsideration for lack of merit.

The Cerezo spouses filed before this Court a petition for review on certiorari under Rule 45. Atty. Cerezo himself signed the petition, docketed as G.R. No. 137593. On 13 April 1999, this Court rendered a resolution denying the petition for review on certiorari for failure to attach an affidavit of service of copies of the petition to the Court of Appeals and to the adverse parties. Even if the petition complied with this requirement, the Court would still have denied the petition as the Cerezo spouses failed to show that the Court of Appeals committed a reversible error. The Court's resolution was entered in the Book of Entries and Judgments when it became final and executory on

28 June 1999.[16]

Undaunted, the Cerezo spouses filed before the Court of Appeals on 6 July 1999 a petition for annulment of judgment under Rule 47 with prayer for restraining order. Atty. Valera and Atty. Dionisio S. Daga (“Atty. Daga”) represented Mrs. Cerezo in the petition, docketed as CA-G.R. SP No. 53572.[17] The petition prayed for the annulment of the 30 May 1995 decision of the trial court and for the issuance of a writ of preliminary injunction enjoining execution of the trial court’s decision pending resolution of the petition.

The Court of Appeals denied the petition for annulment of judgment in a resolution dated 21 October 1999. The resolution reads in part:

In this case, records show that the petitioner previously filed with the lower court a Petition for Relief from Judgment on the ground that they were wrongfully declared in default while waiting for an amicable settlement of the complaint for damages. The court a quo correctly ruled that such petition is without merit. The defendant spouses admit that during the initial hearing they appeared before the court and even mentioned the need for an amicable settlement. Thus, the lower court acquired jurisdiction over the defendant spouses.

Therefore, petitioner having availed of a petition for relief, the remedy of an annulment of judgment is no longer available. The proper action for the petitioner is to appeal the order of the lower court denying the petition for relief.

Wherefore, the instant petition could not be given due course and should accordingly be dismissed.

SO ORDERED.[18]

On 20 January 2000, the Court of Appeals denied the Cerezo spouses’ motion for reconsideration.[19] The Court of Appeals stated:

A distinction should be made between a court’s jurisdiction over a person and its jurisdiction over the subject matter of a case. The former is acquired by the proper service of summons or by the parties’ voluntary appearance; while the latter is conferred by law.

Resolving the matter of jurisdiction over the subject matter, Section 19(1) of B[atas] P[ambansa] 129 provides that Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions in which the subject of the litigation is incapable of pecuniary estimation. Thus it was proper for the lower court to decide the instant case for damages.

Unlike jurisdiction over the subject matter of a case which is absolute and conferred by law; any defects [sic] in the acquisition of jurisdiction over a person (i.e., improper filing of civil complaint or improper service of summons) may be waived by the voluntary appearance of parties.

The lower court admits the fact that no summons was served on defendant Foronda. Thus, jurisdiction over the person of defendant Foronda was not acquired, for which reason he was not held liable in this case. However, it has been proven that jurisdiction over the other defendants was validly acquired by the court a quo.

The defendant spouses admit to having appeared in the initial hearings and in the hearing for plaintiff’s motion to litigate as a pauper. They even mentioned conferences where attempts were made to reach an amicable settlement with plaintiff. However, the possibility of amicable settlement is not a good and substantial defense which will warrant the granting of said petition.

X X X

X X X

X X X

Assuming arguendo that private respondent failed to reserve his right to institute a separate action for damages in the criminal action, the petitioner cannot now raise such issue and question the lower court's jurisdiction because petitioner and her husband have waived such right by voluntarily appearing in the civil case for damages. Therefore, the findings and the decision of the lower court may bind them.

Records show that the petitioner previously filed with the lower court a Petition for Relief from Judgment on the ground that they were wrongfully declared in default while waiting for an amicable settlement of the complaint for damages. The court a quo correctly ruled that such petition is without merit, jurisdiction having been acquired by the voluntary appearance of defendant spouses.

Once again, it bears stressing that having availed of a petition for relief, the remedy of annulment of judgment is no longer available.

Based on the foregoing, the motion for reconsideration could not be given due course and is hereby DENIED.

SO ORDERED.[20]

The Issues

On 7 February 2000, Mrs. Cerezo, this time with Atty. Daga alone representing her, filed the present petition for review on certiorari before this Court. Mrs. Cerezo claims that:

- In dismissing the Petition for Annulment of Judgment, the Court of Appeals assumes that the issues raised in the petition for annulment is based on extrinsic fraud related to the denied petition for relief notwithstanding that the grounds relied upon involves questions of lack of jurisdiction.

- In dismissing the Petition for Annulment, the Court of Appeals disregarded the allegation that the lower court[']s findings of negligence against defendant-driver Danilo Foronda [whom] the lower court did not summon is null and void for want of due process and consequently, such findings of negligence which is [sic] null and void cannot become the basis of the lower court to adjudge petitioner-employer liable for civil damages.

- In dismissing the Petition for Annulment, the Court of Appeals ignored the allegation that defendant-driver Danilo A. Foronda whose negligence is the main issue is an indispensable party whose presence is compulsory but [whom] the lower court did not summon.

- In dismissing the Petition for Annulment, the Court of Appeals ruled that assuming arguendo that private respondent failed to reserve his right to institute a separate action for damages in the criminal action, the petitioner cannot now raise such issue and question the lower court's jurisdiction because petitioner [has] waived such right by voluntarily appearing in the civil case for damages notwithstanding that lack of jurisdiction cannot be waived.[21]

The Court's Ruling

The petition has no merit. As the issues are interrelated, we shall discuss them jointly.

Remedies Available

to a Party Declared in Default

An examination of the records of the entire proceedings shows that three lawyers filed and signed pleadings on behalf of Mrs. Cerezo, namely, Atty. Daga, Atty. Valera, and Atty. Cerezo. Despite their number, Mrs. Cerezo's counsels failed to avail of the proper remedies. It is either by sheer ignorance or by malicious manipulation of legal technicalities that they have managed to delay the disposition of the present case, to the detriment of pauper litigant Tuazon.

Mrs. Cerezo claims she did not receive any copy of the order declaring the Cerezo spouses in default. Mrs. Cerezo asserts that she only came to know of the default order on 25 June 1995, when she received a copy of the decision. On 10 July 1995, Mrs. Cerezo filed before the trial court a petition for relief from judgment under Rule 38, alleging "fraud, mistake, or excusable negligence" as grounds. On 4 March 1998, the trial court denied Mrs. Cerezo's petition for relief from judgment. The trial court stated that Mrs. Cerezo could have availed of appeal as a remedy and that she failed to prove that the judgment was entered through fraud, accident, mistake, or excusable negligence. Mrs. Cerezo then filed before the Court of Appeals a petition for certiorari under Section 1 of Rule 65 assailing the denial of the petition for relief from judgment. On 21 January 1999, the Court of Appeals dismissed Mrs. Cerezo's petition. On 24 February 1999, the appellate court denied Mrs. Cerezo's motion for reconsideration. On 11 March 1999, Mrs. Cerezo filed before this Court a petition for review on certiorari under Rule 45, questioning the denial of the petition for relief from judgment. We denied the petition and our resolution became final and executory on 28 June 1999.

On 6 July 1999, a mere eight days after our resolution became final and executory, Mrs. Cerezo filed before the Court of Appeals a petition for annulment of the judgment of the trial court under Rule 47. Meanwhile, on 25 August 1999, the trial court issued over the objection of Mrs. Cerezo an order of execution of the judgment in Civil Case No. 7415. On 21 October 1999, the Court of Appeals dismissed the petition for annulment of judgment. On 20 January 2000, the Court of Appeals denied Mrs. Cerezo's motion for reconsideration. On 7 February 2000, Mrs. Cerezo filed the present petition for review on certiorari under Rule 45 challenging the dismissal of her petition for annulment of judgment.

Lina v. Court of Appeals[22] enumerates the remedies available to a party declared in default:

- a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41). (Emphasis added)

Moreover, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.[23]

Mrs. Cerezo admitted that she received a copy of the trial court's decision on 25 June 1995. Based on this admission, Mrs. Cerezo had at least three remedies at her disposal: an appeal, a motion for new trial, or a petition

for certiorari.

Mrs. Cerezo could have appealed under Rule 41[24] from the default judgment within 15 days from notice of the judgment. She could have availed of the power of the Court of Appeals to try cases and conduct hearings, receive evidence, and perform all acts necessary to resolve factual issues raised in cases falling within its appellate jurisdiction.[25]

Mrs. Cerezo also had the option to file under Rule 37[26] a motion for new trial within the period for taking an appeal. If the trial court grants a new trial, the original judgment is vacated, and the action will stand for trial de novo. The recorded evidence taken in the former trial, as far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.[27]

Mrs. Cerezo also had the alternative of filing under Rule 65[28] a petition for certiorari assailing the order of default within 60 days from notice of the judgment. An order of default is interlocutory, and an aggrieved party may file an appropriate special civil action under Rule 65. [29] In a petition for certiorari, the appellate court may declare void both the order of default and the judgment of default.

Clearly, Mrs. Cerezo had every opportunity to avail of these remedies within the reglementary periods provided under the Rules of Court. However, Mrs. Cerezo opted to file a petition for relief from judgment, which is available only in exceptional cases. A petition for relief from judgment should be filed within the reglementary period of 60 days from knowledge of judgment and six months from entry of judgment, pursuant to Rule 38 of the Rules of Civil Procedure.[30] *Tuason v. Court of Appeals*[31] explained the nature of a petition for relief from judgment:

When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which has been lost thru inexcusable negligence.

Evidently, there was no fraud, accident, mistake, or excusable negligence that prevented Mrs. Cerezo from filing an appeal, a motion for new trial or a petition for certiorari. It was error for her to avail of a petition for relief from judgment.

After our resolution denying Mrs. Cerezo's petition for relief became final and executory, Mrs. Cerezo, in her last ditch attempt to evade liability, filed before the Court of Appeals a petition for annulment of the judgment of the trial court. Annulment is available only on the grounds of extrinsic fraud and lack of jurisdiction. If based on extrinsic fraud, a party must file the petition within four years from its discovery, and if based on lack of jurisdiction, before laches or estoppel bars the petition. Extrinsic fraud is not a valid ground if such fraud was used as a ground, or could have been used as a ground, in a motion for new trial or petition for relief from judgment.[32]

Mrs. Cerezo insists that lack of jurisdiction, not extrinsic fraud, was her ground for filing the petition for annulment of judgment. However, a party may avail of the remedy of annulment of judgment under Rule 47 only if the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the party.[33] Mrs. Cerezo could have availed of a new trial or appeal but through her own fault she erroneously availed of the remedy of a petition for relief, which was denied with finality. Thus, Mrs. Cerezo may no longer avail of the remedy of annulment.

In any event, the trial court clearly acquired jurisdiction over Mrs. Cerezo's person. Mrs. Cerezo actively participated in the proceedings before the trial court, submitting herself to the jurisdiction of the trial court. The defense of lack of jurisdiction fails in light of her active participation in the trial court proceedings. Estoppel or laches may also bar lack of jurisdiction as a ground for nullity especially if raised for the first time on appeal by a party who participated in the proceedings before the trial court, as what happened in this case.[34]

For these reasons, the present petition should be dismissed for utter lack of merit. The extraordinary action to annul a final judgment is restricted to the grounds specified in the rules. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory. There would be no end to litigation if parties who have unsuccessfully availed of any of the appropriate remedies or lost them through their fault could still bring an action for annulment of judgment.[35] Nevertheless, we shall discuss the issues raised in the present petition to clear any doubt about the correctness of the decision of the trial court.

Mrs. Cerezo's Liability and the Trial Court's Acquisition of Jurisdiction

Mrs. Cerezo contends that the basis of the present petition for annulment is lack of jurisdiction. Mrs. Cerezo asserts that the trial court could not validly render judgment since it failed to acquire jurisdiction over Foronda. Mrs. Cerezo points out that there was no service of summons on Foronda. Moreover, Tuazon failed to reserve his right to institute a separate civil action for damages in the criminal action. Such contention betrays a faulty foundation. Mrs. Cerezo's contention proceeds from the point of view of criminal law and not of civil law, while the basis of the present action of Tuazon is quasi-delict under the Civil Code, not delict under the Revised Penal Code.

The same negligent act may produce civil liability arising from a delict under Article 103 of the Revised Penal Code, or may give rise to an action for a quasi-delict under Article 2180 of the Civil Code. An aggrieved party may choose between the two remedies. An action based on a quasi-delict may proceed independently from the criminal action.[36] There is, however, a distinction between civil liability arising from a delict and civil liability arising from a quasi-delict. The choice of remedy, whether to sue for a delict or a quasi-delict, affects the procedural and jurisdictional issues of the action.[37]

Tuazon chose to file an action for damages based on a quasi-delict. In his complaint, Tuazon alleged that Mrs. Cerezo, "without exercising due care and diligence in the supervision and management of her employees and buses," hired Foronda as her driver. Tuazon became disabled because of Foronda's "recklessness, gross negligence and imprudence," aggravated by Mrs. Cerezo's "lack of due care and diligence in the selection and supervision of her employees, particularly Foronda." [38]

The trial court thus found Mrs. Cerezo liable under Article 2180 of the Civil Code. Article 2180 states in part:

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

Contrary to Mrs. Cerezo's assertion, Foronda is not an indispensable party to the case. An indispensable party is one whose interest is affected by the court's action in the litigation, and without whom no final resolution of the case is possible.[39] However, Mrs. Cerezo's liability as an employer in an action for a quasi-delict is not only solidary, it is also primary and direct. Foronda is not an indispensable party to the final resolution of Tuazon's action for damages against Mrs. Cerezo.

The responsibility of two or more persons who are liable for a quasi-delict is solidary.[40] Where there is a

solidary obligation on the part of debtors, as in this case, each debtor is liable for the entire obligation. Hence, each debtor is liable to pay for the entire obligation in full. There is no merger or renunciation of rights, but only mutual representation.[41] Where the obligation of the parties is solidary, either of the parties is indispensable, and the other is not even a necessary party because complete relief is available from either.[42] Therefore, jurisdiction over Foronda is not even necessary as Tuazon may collect damages from Mrs. Cerezo alone.

Moreover, an employer's liability based on a quasi-delict is primary and direct, while the employer's liability based on a delict is merely subsidiary.[43] The words "primary and direct," as contrasted with "subsidiary," refer to the remedy provided by law for enforcing the obligation rather than to the character and limits of the obligation.[44] Although liability under Article 2180 originates from the negligent act of the employee, the aggrieved party may sue the employer directly. When an employee causes damage, the law presumes that the employer has himself committed an act of negligence in not preventing or avoiding the damage. This is the fault that the law condemns. While the employer is civilly liable in a subsidiary capacity for the employee's criminal negligence, the employer is also civilly liable directly and separately for his own civil negligence in failing to exercise due diligence in selecting and supervising his employee. The idea that the employer's liability is solely subsidiary is wrong.[45]

The action can be brought directly against the person responsible (for another), without including the author of the act. The action against the principal is accessory in the sense that it implies the existence of a prejudicial act committed by the employee, but it is not subsidiary in the sense that it can not be instituted till after the judgment against the author of the act or at least, that it is subsidiary to the principal action; the action for responsibility (of the employer) is in itself a principal action.[46]

Thus, there is no need in this case for the trial court to acquire jurisdiction over Foronda. The trial court's acquisition of jurisdiction over Mrs. Cerezo is sufficient to dispose of the present case on the merits.

In contrast, an action based on a delict seeks to enforce the subsidiary liability of the employer for the criminal negligence of the employee as provided in Article 103 of the Revised Penal Code. To hold the employer liable in a subsidiary capacity under a delict, the aggrieved party must initiate a criminal action where the employee's delict and corresponding primary liability are established.[47] If the present action proceeds from a delict, then the trial court's jurisdiction over Foronda is necessary. However, the present action is clearly for the quasi-delict of Mrs. Cerezo and not for the delict of Foronda.

The Cerezo spouses' contention that summons be served anew on them is untenable in light of their participation in the trial court proceedings. To uphold the Cerezo spouses' contention would make a fetish of a technicality.[48] Moreover, any irregularity in the service of summons that might have vitiated the trial court's jurisdiction over the persons of the Cerezo spouses was deemed waived when the Cerezo spouses filed a petition for relief from judgment.[49]

We hold that the trial court had jurisdiction and was competent to decide the case in favor of Tuazon and against Mrs. Cerezo even in the absence of Foronda. Contrary to Mrs. Cerezo's contention, Foronda is not an indispensable party to the present case. It is not even necessary for Tuazon to reserve the filing of a separate civil action because he opted to file a civil action for damages against Mrs. Cerezo who is primarily and directly liable for her own civil negligence. The words of Justice Jorge Bocobo in *Barredo v. Garcia* still hold true today as much as it did in 1942:

x x x [T]o hold that there is only one way to make defendant's liability effective, and that is, to sue the driver and exhaust his (the latter's) property first, would be tantamount to compelling the plaintiff to follow a devious and cumbersome method of obtaining relief. True, there is such a remedy under our laws, but there is also a more expeditious way, which is based on the primary and direct responsibility of the defendant under article

[2180] of the Civil Code. Our view of the law is more likely to facilitate remedy for civil wrongs, because the procedure indicated by the defendant is wasteful and productive of delay, it being a matter of common knowledge that professional drivers of taxis and other similar public conveyances do not have sufficient means with which to pay damages. Why, then, should the plaintiff be required in all cases to go through this roundabout, unnecessary, and probably useless procedure? In construing the laws, courts have endeavored to shorten and facilitate the pathways of right and justice.[50]

Interest at the rate of 6% per annum is due on the amount of damages adjudged by the trial court.[51] The 6% per annum interest shall commence from 30 May 1995, the date of the decision of the trial court. Upon finality of this decision, interest at 12% per annum, in lieu of 6% per annum, is due on the amount of damages adjudged by the trial court until full payment.

WHEREFORE, we DENY the instant petition for review. The Resolution dated 21 October 1999 of the Court of Appeals in CA-G.R. SP No. 53572, as well as its Resolution dated 20 January 2000 denying the motion for reconsideration, is AFFIRMED with the MODIFICATION that the amount due shall earn legal interest at 6% per annum computed from 30 May 1995, the date of the trial court's decision. Upon finality of this decision, the amount due shall earn interest at 12% per annum, in lieu of 6% per annum, until full payment.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, and Azcuna, JJ., concur.

Panganiban, J., on official leave.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Eubulo G. Verzola and Artemio G. Tuquero, concurring.

[3] Penned by Judge Carlos D. Rustia.

[4] CA Rollo, p. 8.

[5] Ibid., pp. 13-17.

[6] Rollo, p. 66.

[7] CA Rollo, pp. 18-20.

[8] Ibid., p. 21.

[9] Rollo, p. 4.

[10] CA Rollo, p. 23.

[11] Ibid., pp. 24-33.

[12] Ibid., pp. 35-36.

[13] Penned by Judge Lourdes F. Gatbalite.

[14] Captioned "Hermana R. Cerezo and Juan D. Cerezo, as husband, petitioners, v. Hon. Lourdes Gatbalite and David Tuazon, respondents."

[15] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Angelina Sandoval-Gutierrez and

Martin S. Villarama, Jr., concurring.

[16] Rollo, pp. 60-61.

[17] Captioned “Hermana R. Cerezo and Juan D. Cerezo, as husband, petitioners, v. Lourdes Gatbalite, Presiding Judge (incumbent), RTC Branch 56, Angeles City, and David Tuazon, respondents.”

[18] Rollo, pp. 36-37.

[19] Ibid., pp. 33-34.

[20] Ibid., pp. 18-19.

[21] Ibid., pp. 6-7.

[22] No. L-63397, 9 April 1985, 135 SCRA 637.

[23] Pacete v. Cariaga, Jr., G.R. No. 53880, 17 March 1994, 231 SCRA 321. See also Matute v. Court of Appeals, 136 Phil. 162 (1969); Omico Mining and Industrial Corporation v. Vallejos, No. L-38974, 25 March 1975, 63 SCRA 285.

[24] Section 3, Rule 41.

[25] Section 9(3), Batas Pambansa Blg. 129, as amended.

[26] Section 1. Grounds of and period for filing motion for new trial or reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

x x x

x x x

x x x

[27] Sections 1 and 6, Rule 37.

[28] Section 1. Petition for certiorari. — When any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x

x x x

x x x

Section 4. Where petition filed. — The petition may be filed not later than sixty (60) days from notice of judgment, order or resolution sought to be assailed in the Supreme Court; or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

[29] Section 1, Rule 41.

[30] Section 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Section 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; x x x.

See *Turqueza v. Hernando*, No. L-51626, 30 April 1980, 97 SCRA 483.

[31] 326 Phil. 169 (1996).

[32] Sections 2 and 3, Rule 47.

[33] *Cipriano M. Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc. and The Register of Deeds of Valenzuela City*, G.R. No. 139895, 15 August 2003; *Teresita Villasor Manipol, et al., v. Spouses Pablo and Antonia Ricafort*, G.R. No. 150159, 25 July 2003.

[34] *Tijam, et al. v. Sibonghanoy, et al.*, 181 Phil. 556 (1968).

[35] See *Ibabao v. Intermediate Appellate Court*, No. L-74848, 20 May 1987, 150 SCRA 76.

[36] See Article 2177, Civil Code of the Philippines. Compare Sections 1 and 3, Rule 111, 1988 Rules of Criminal Procedure with Sections 1 and 3, Rule 111, 2000 Rules of Criminal Procedure.

[37] See *Barredo v. Garcia*, 73 Phil. 607 (1942).

[38] CA Rollo, pp. 8-9.

[39] *Imson v. Court of Appeals*, G.R. No. 106436, 8 December 1994, 239 SCRA 59.

[40] Article 2194, Civil Code of the Philippines.

[41] *Quiombing v. CA*, G.R. No. 93219, 30 August 1990, 189 SCRA 331 (citing *Tolentino*, IV Civil Code of the Philippines 218 (1985 ed.)).

[42] *Ibid.*, (citing *Feria*, Civil Procedure 153 (1969 ed.)).

[43] *Poblete v. Fabros*, No. L-29803, 14 September 1979, 93 SCRA 200.

[44] 33A Words and Phrases 215 (1971 ed.)

[45] See *Barredo v. Garcia*, *supra* note 37 (1942) (citing *Amandi*, 4 Cuestionario del Código Civil Reformado

429, 430).

[46] Ibid., (citing Laurent, 20 Principles of French Civil Law 734-735 (Spanish translation)).

[47] Poblete v. Fabros, supra note 43; Franco v. Intermediate Appellate Court, G.R. No. 71137, 5 October 1989, 178 SCRA 331.

[48] Gumabay v. Baralin, No. L-30683, 77 SCRA 258, 31 May 1977; Rule 14, Section 20.

[49] See J.M. Tuason & Co., Inc., v. Estabillo, No. L-20610, 9 January 1975, 62 SCRA 1.

[50] Barredo v. Garcia, supra note 36, pp. 620-621.

[51] Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, 12 July 1994, 234 SCRA 78; Reformina v. Tomol, Jr., No. L-59096, 11 October 1985, 139 SCRA 260.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.