

FGU INSURANCE CORPORATION, PETITIONER, VS. G.P. SARMIENTO TRUCKING CORPORATION AND LAMBERT M. EROLES, RESPONDENTS.

G.R. No. 141910. August 06, 2002

Ponente: VITUG, J.

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VITUG, J.:

G.P. Sarmiento Trucking Corporation (GPS) undertook to deliver on 18 June 1994 thirty (30) units of Condura S.D. white refrigerators aboard one of its Isuzu truck, driven by Lambert Eroles, from the plant site of Concepcion Industries, Inc., along South Superhighway in Alabang, Metro Manila, to the Central Luzon Appliances in Dagupan City. While the truck was traversing the north diversion road along McArthur highway in Barangay Anupol, Bamban, Tarlac, it collided with an unidentified truck, causing it to fall into a deep canal, resulting in damage to the cargoes.

FGU Insurance Corporation (FGU), an insurer of the shipment, paid to Concepcion Industries, Inc., the value of the covered cargoes in the sum of P204,450.00. FGU, in turn, being the subrogee of the rights and interests of Concepcion Industries, Inc., sought reimbursement of the amount it had paid to the latter from GPS. Since the trucking company failed to heed the claim, FGU filed a complaint for damages and breach of contract of carriage against GPS and its driver Lambert Eroles with the Regional Trial Court, Branch 66, of Makati City. In its answer, respondents asserted that GPS was the exclusive hauler only of Concepcion Industries, Inc., since 1988, and it was not so engaged in business as a common carrier. Respondents further claimed that the cause of damage was purely accidental.

The issues having thus been joined, FGU presented its evidence, establishing the extent of damage to the cargoes and the amount it had paid to the assured. GPS, instead of submitting its evidence, filed with leave of court a motion to dismiss the complaint by way of demurrer to evidence on the ground that petitioner had failed to prove that it was a common carrier.

The trial court, in its order of 30 April 1996,[1] granted the motion to dismiss, explaining thusly:

“Under Section 1 of Rule 131 of the Rules of Court, it is provided that ‘Each party must prove his own affirmative allegation, xxx.’

“In the instant case, plaintiff did not present any single evidence that would prove that defendant is a common carrier.

“x x x x x x x x

“Accordingly, the application of the law on common carriers is not warranted and the presumption of fault or negligence on the part of a common carrier in case of loss, damage or deterioration of goods during transport under 1735 of the Civil Code is not availing.

“Thus, the laws governing the contract between the owner of the cargo to whom the plaintiff was subrogated

and the owner of the vehicle which transports the cargo are the laws on obligation and contract of the Civil Code as well as the law on quasi delicts.

“Under the law on obligation and contract, negligence or fault is not presumed. The law on quasi delict provides for some presumption of negligence but only upon the attendance of some circumstances. Thus, Article 2185 provides:

‘Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.’

“Evidence for the plaintiff shows no proof that defendant was violating any traffic regulation. Hence, the presumption of negligence is not obtaining.

“Considering that plaintiff failed to adduce evidence that defendant is a common carrier and defendant’s driver was the one negligent, defendant cannot be made liable for the damages of the subject cargoes.”[2]

The subsequent motion for reconsideration having been denied,[3] plaintiff interposed an appeal to the Court of Appeals, contending that the trial court had erred (a) in holding that the appellee corporation was not a common carrier defined under the law and existing jurisprudence; and (b) in dismissing the complaint on a demurrer to evidence.

The Court of Appeals rejected the appeal of petitioner and ruled in favor of GPS. The appellate court, in its decision of 10 June 1999, [4] discoursed, among other things, that -

"x x x in order for the presumption of negligence provided for under the law governing common carrier (Article 1735, Civil Code) to arise, the appellant must first prove that the appellee is a common carrier. Should the appellant fail to prove that the appellee is a common carrier, the presumption would not arise; consequently, the appellant would have to prove that the carrier was negligent.

"x x x x x x x x

"Because it is the appellant who insists that the appellees can still be considered as a common carrier, despite its ‘limited clientele,’ (assuming it was really a common carrier), it follows that it (appellant) has the burden of proving the same. It (plaintiff-appellant) ‘must establish his case by a preponderance of evidence, which means that the evidence as a whole adduced by one side is superior to that of the other.’ (Summa Insurance Corporation vs. Court of Appeals, 243 SCRA 175). This, unfortunately, the appellant failed to do -- hence, the dismissal of the plaintiff’s complaint by the trial court is justified.

"x x x x x x x x

"Based on the foregoing disquisitions and considering the circumstances that the appellee trucking corporation has been ‘its exclusive contractor, hauler since 1970, defendant has no choice but to comply with the directive of its principal,’ the inevitable conclusion is that the appellee is a private carrier.

"x x x x x x x x

"x x the lower court correctly ruled that ‘the application of the law on common carriers is not warranted and the presumption of fault or negligence on the part of a common carrier in case of loss, damage or deterioration of good[s] during transport under [article] 1735 of the Civil Code is not availing.’ x x x.

"Finally, We advert to the long established rule that conclusions and findings of fact of a trial court are entitled to great weight on appeal and should not be disturbed unless for strong and valid reasons.”[5]

Petitioner's motion for reconsideration was likewise denied;[6] hence, the instant petition,[7] raising the following issues:

I

WHETHER RESPONDENT GPS MAY BE CONSIDERED AS A COMMON CARRIER AS DEFINED UNDER THE LAW AND EXISTING JURISPRUDENCE.

II

WHETHER RESPONDENT GPS, EITHER AS A COMMON CARRIER OR A PRIVATE CARRIER, MAY BE PRESUMED TO HAVE BEEN NEGLIGENT WHEN THE GOODS IT UNDERTOOK TO TRANSPORT SAFELY WERE SUBSEQUENTLY DAMAGED WHILE IN ITS PROTECTIVE CUSTODY AND POSSESSION.

III

WHETHER THE DOCTRINE OF RES IPSA LOQUITUR IS APPLICABLE IN THE INSTANT CASE.

On the first issue, the Court finds the conclusion of the trial court and the Court of Appeals to be amply justified. GPS, being an exclusive contractor and hauler of Concepcion Industries, Inc., rendering or offering its services to no other individual or entity, cannot be considered a common carrier. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for hire or compensation, offering their services to the public,[8] whether to the public in general or to a limited clientele in particular, but never on an exclusive basis.[9] The true test of a common carrier is the carriage of passengers or goods, providing space for those who opt to avail themselves of its transportation service for a fee.[10] Given accepted standards, GPS scarcely falls within the term “common carrier.”

The above conclusion notwithstanding, GPS cannot escape from liability.

In culpa contractual, upon which the action of petitioner rests as being the subrogee of Concepcion Industries, Inc., the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief.[11] The law, recognizing the obligatory force of contracts,[12] will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof.[13] A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promisee that may include his “expectation interest,” which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his “reliance interest,” which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his “restitution interest,” which is his interest in having restored to him any benefit that he has conferred on the other party.[14] Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action.[15] The effect of every infraction is to create a new duty, that is, to make recompense to the one who has been injured by the failure of another to observe his contractual obligation[16] unless he can show extenuating circumstances, like proof of his exercise of due diligence (normally that of the diligence of a good father of a family or, exceptionally by stipulation or by law such as in the case of common carriers, that of extraordinary diligence) or of the attendance of fortuitous event, to excuse him from his ensuing liability.

Respondent trucking corporation recognizes the existence of a contract of carriage between it and petitioner’s assured, and admits that the cargoes it has assumed to deliver have been lost or damaged while in its custody. In such a situation, a default on, or failure of compliance with, the obligation – in this case, the delivery of the goods in its custody to the place of destination - gives rise to a presumption of lack of care and corresponding liability on the part of the contractual obligor the burden being on him to establish otherwise. GPS has failed to do so.

Respondent driver, on the other hand, without concrete proof of his negligence or fault, may not himself be ordered to pay petitioner. The driver, not being a party to the contract of carriage between petitioner's principal and defendant, may not be held liable under the agreement. A contract can only bind the parties who have entered into it or their successors who have assumed their personality or their juridical position.[17] Consonantly with the axiom *res inter alios acta aliis neque nocet prodest*, such contract can neither favor nor prejudice a third person. Petitioner's civil action against the driver can only be based on *culpa aquiliana*, which, unlike *culpa contractual*, would require the claimant for damages to prove negligence or fault on the part of the defendant.[18]

A word in passing. *Res ipsa loquitur*, a doctrine being invoked by petitioner, holds a defendant liable where the thing which caused the injury complained of is shown to be under the latter's management and the accident is such that, in the ordinary course of things, cannot be expected to happen if those who have its management or control use proper care. It affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.[19] It is not a rule of substantive law and, as such, it does not create an independent ground of liability. Instead, it is regarded as a mode of proof, or a mere procedural convenience since it furnishes a substitute for, and relieves the plaintiff of, the burden of producing specific proof of negligence. The maxim simply places on the defendant the burden of going forward with the proof.[20] Resort to the doctrine, however, may be allowed only when (a) the event is of a kind which does not ordinarily occur in the absence of negligence; (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.[21] Thus, it is not applicable when an unexplained accident may be attributable to one of several causes, for some of which the defendant could not be responsible.[22]

Res ipsa loquitur generally finds relevance whether or not a contractual relationship exists between the plaintiff and the defendant, for the inference of negligence arises from the circumstances and nature of the occurrence and not from the nature of the relation of the parties.[23] Nevertheless, the requirement that responsible causes other than those due to defendant's conduct must first be eliminated, for the doctrine to apply, should be understood as being confined only to cases of pure (non-contractual) tort since obviously the presumption of negligence in *culpa contractual*, as previously so pointed out, immediately attaches by a failure of the covenant or its tenor. In the case of the truck driver, whose liability in a civil action is predicated on *culpa aquiliana*, while he admittedly can be said to have been in control and management of the vehicle which figured in the accident, it is not equally shown, however, that the accident could have been exclusively due to his negligence, a matter that can allow, forthwith, *res ipsa loquitur* to work against him.

If a demurrer to evidence is granted but on appeal the order of dismissal is reversed, the movant shall be deemed to have waived the right to present evidence.[24] Thus, respondent corporation may no longer offer proof to establish that it has exercised due care in transporting the cargoes of the assured so as to still warrant a remand of the case to the trial court.

WHEREFORE, the order, dated 30 April 1996, of the Regional Trial Court, Branch 66, of Makati City, and the decision, dated 10 June 1999, of the Court of Appeals, are **AFFIRMED** only insofar as respondent Lambert M. Eroles is concerned, but said assailed order of the trial court and decision of the appellate court are **REVERSED** as regards G.P. Sarmiento Trucking Corporation which, instead, is hereby ordered to pay FGU Insurance Corporation the value of the damaged and lost cargoes in the amount of P204,450.00. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

- [1] Rollo, p. 14.
- [2] Rollo, pp. 14-15.
- [3] Rollo, p. 17
- [4] Rollo, p. 20.
- [5] Rollo, pp. 24-28.
- [6] Rollo, p. 32.
- [7] Rollo, p. 3.
- [8] Article 1732, Civil Code.
- [9] Sec. 13[b], Public Service Act as amended; see also *Guzman vs. Court of Appeals*, G.R. L-47822, 22 December 1988.
- [10] *National Steel Corporation vs. Court of Appeals*, 283 SCRA 45.
- [11] *Calalas vs. Court of Appeals*, 332 SCRA 356; *Sabena Belgian World Airlines vs. Court of Appeals*, 255 SCRA 38.
- [12] See Articles 1159, 1308, 1315, 1356, Civil Code.
- [13] *Anson on Contracts*, 1939, p. 424; 17A Am Jur 2d, p. 728 citing *Parks vs. Parks*, 187 P2d 145.
- [14] *Restatement, Second, Contracts*, §344.
- [15] *Fuller and Purdue, The Reliance Interest in Contract Damages*, 46 Yale L.J.61 (1936).
- [16] *Richardson on Contracts*, 1951, p. 309.
- [17] Article 1311, Civil Code.
- [18] *Calalas vs. Court of Appeals*, supra; See Article 2176, Civil Code.
- [19] *Africa vs. Caltex (Phils.) Inc.*, 16 SCRA 448; *Layugan vs. Intermediate Appellate Court*, 167 SCRA 376.
- [20] *Ramos vs. Court of Appeals*, 321 SCRA 600.
- [21] *Sangco, Torts and Damages V.1*, 1993, p. 29, citing 58 Am Jur 2d, pp. 56-58. See *Ramos vs. Court of Appeals*, supra.
- [22] *Words and Phrases Vol. 37*, p. 483.
- [23] 57B Am Jur 2d, p. 496.
- [24] Section 1, Rule 35, Rules of Court; Section 1, Rule 33, 1997 Rules of Civil Procedure.

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