

PEDRO TY BELIZAR, PLAINTIFF AND APPELLANT, VS. FLORENCIO BRAZAS, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 15992. May 31, 1961*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Samar dated June 6, 1959, dismissing the complaint filed before it.

On April 21, 1959, Pedro Ty Belizar filed a complaint against Florencio Brazas, Felix Hilario, Lucio Baldonido, alleging that he is operating the Samar Express Transit; that defendants are being sued in their capacity as employees (of the Bureau of Public Highways); that due to their gross negligence in not providing the ferry boat with safety devices, one of his auto-trucks, while being transported from one bank of the Taft River, Taft, Samar, to the other, fell into the river and was submerged in water for over 30 hours; that as a consequence thereof, he suffered actual and moral damages and had to hire counsel to prosecute this action. He therefore prays for payment to him by the defendants of said damages and attorney's fees.

On May 14, 1959, defendant Felix Hilario, on his own behalf, filed his answer, denying the material allegations of the complaint and alleging as special defense that he is working only under the instructions of his superiors. On May 19, 1959, defendants Lucio Baldonido, Felix Balato, Teodoro Balato and Todesco Cebuano filed a motion to dismiss on the grounds that the complaint states no cause of action and that they are not the real parties in interest. After an opposition thereto was filed by the plaintiff, the remaining defendant Florencio Brazas filed another motion to dismiss on May 20, 1959, claiming that the plaintiff has no cause of action against the defendants because they are being sued in their official capacities and therefore the claim for damages should be directed against the State.

Acting upon the motions to dismiss, the lower court on June 6, 1959, dismissed the complaint, and against this order, the plaintiff has prosecuted this appeal directly to this Court.

The only issue before this Court is the correctness of the order appealed from.

It is apparent from the records that although the Government is the one operating the ferry boat, from which plaintiff's truck fell, because of the absence of safety devices, the plaintiff has elected to sue the defendant employees personally for their negligent acts under the doctrine of quasi-delict. Article 2180 of the Civil Code provides for the liability of an employer for the tortious acts of his employees. This, however, does not exempt the employees from personal liability, especially if there are no persons having direct supervision over them, or if there is proof of the existence of negligence on their part. So the injured party can bring an action directly against the author of the negligent act or omission, although he may sue as joint defendants such author and the person responsible for him (7 Salvat 80, quoted in V Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1959 edition, p. 520). The provisions of Article 1733 of the Civil Code and the decision in the case of the Manila Railroad Co. vs. La Compañía Trasatlantica and Atlantic Gulf & Pacific Co., 38 Phil., 875,

cited in the order appealed from refer to an action based upon a contract of transportation. The present action being based on torts, said authorities are not applicable thereto.

The fact that the duties and positions of the defendants are indicated does not mean that they are being sued in their official capacities, especially as the present action is not one against the Government.

In view of the foregoing we find that the dismissal of the complaint is not justified, and for this reason, we hereby set aside the order of dismissal appealed from and remand the case to the court of origin for further proceedings. With costs against the defendants-appellees.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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