

URBANO MAGBOO AND EMILIA C. MAGBOO, PLAINTIFFS AND APPELLEES, VS. DELFIN BERNARDO, DEFENDANT AND APPELLANT.

G. R. No. 16790. April 30, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the Court of First Instance of Manila to the Court of Appeals, and certified by the latter to this Court on the ground that only questions of law are involved.

The action of the spouses Urbano Magboo and Emilia C. Magboo against Delfin Bernardo is for enforcement of his subsidiary liability as employer in accordance with Article 103, Revised Penal Code. The trial court ordered defendant to pay plaintiffs P3,000.00 and costs upon the following stipulated facts:

"1.

That plaintiffs are the parents of Cesar Magboo, a child of 8 years old, who lived with them and was under their custody until his death on October 24, 1956 when he was killed in a motor vehicle accident, the fatal vehicle being a passenger jeepney with Plate No. AC-1963 (56) owned by the defendant;

"2.

That at the time of the accident, said passenger jeepney was driven by Conrado Roque;

"3.

That the contract between Conrado Roque and defendant Delfin Bernardo was that Roque was to pay to defendant the sum of P8.00, which he paid to said defendant, for privilege of driving the Jeepney on October 24, 1956, it being their agreement that whatever earnings Roque could make out of the use of the jeepney in transporting passengers from one point to another in the City of Manila would belong entirely to Conrado Roque;

"4.

That as a consequence of the accident and as a result of the death of Cesar Magboo in said accident, Conrado Roque was prosecuted for homicide thru reckless imprudence before the Court of First Instance of Manila, the information having been docketed as Criminal Case. No. 37736, and that upon arraignment Conrado Roque pleaded guilty to the information and was sentenced to six (6) months of arresto mayor, with the accessory penalties of the law; to indemnify the heirs of the deceased in the sum of P3,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs;

"5.

That pursuant to said judgment Conrado Roque served his sentence but he was not able to pay the indemnity because he was insolvent,"

Appellant assails said decision, assigning three errors which boil down to the question of whether or not an employer-employee relationship exists between a jeepney-owner and a driver under a "boundary system" arrangement. Appellant contends that the relationship is essentially that of lessor and lessee.

A similar contention has been rejected by this Court in several cases. In *National Labor Union vs. Dinglasan*, 98 Phil., 649, 52 Off. Gaz., No. 4, 1933, it was held that the features which characterize the "boundary system"—namely, the fact that the driver does not receive a fixed wage but gets only the excess of the amount of fares collected by him over the amount he pays to the jeep-owner, and that the gasoline consumed by the jeep is for the account of the driver—are not sufficient to withdraw the relationship between them from that of the employer and employee. The ruling was subsequently cited and applied in *Doce vs. Workmen's Compensation Commission*, 104 Phil., 946, which involved the liability of a bus owner for injury compensation to a conductor working under the "boundary system."

"The same principle applies with greater reason in negligence cases concerning the right of third parties to recover damages for injuries sustained. In *Montoya vs. Ignacio*, 94 Phil., 182, the owner and operator of a passenger jeepney leased it to another, but without the approval of the Public Service Commission. In a subsequent collision a passenger died. We ruled that since the lease was made without such approval, which was required by law, the owner continued to be the operator of the vehicle in legal contemplation and as such was responsible for the consequences incident to its operation. The same responsibility was held to attach in a case where the injured party was not a passenger but a third person, who sued on the theory of culpa aquiliana (*Timbol vs. Osias*, L-7547, April 30, 1955). There is no reason why a different rule should be applied in a subsidiary liability case under Article 103 of the Revised Penal Code. As in the existence of an employer-employee relationship between the owner of the vehicle and the driver. Indeed to exempt from liability the owner of a public vehicle who operates it under the "boundary system" on the ground that he is a mere lessor would be not only to abet flagrant violations of the Public Service Law but also to place the riding public at the mercy of reckless and irresponsible drivers—reckless because the measure of their earnings depends largely upon the number of trips they make and, hence, the speed at which they drive; and irresponsible because most if not all of them are in no position to pay the damages they might cause. (See *Erezo vs. Jepte*, 102 Phil., 103.)

Appellant further argues that he should not have been held subsidiarily liable because Conrado Roque (the driver of the jeepney) pleaded guilty to the charge in the criminal case without appellant's knowledge and contrary to the agreement between them that such plea would not be entered but instead evidence would be presented to prove Roque's innocence. On this point we quote with approval the pertinent portion of the decision appealed from:

"With respect to the contention of the defendant that he was taken unaware by the spontaneous plea of guilt entered by the driver Conrado Roque, and that he did not have a chance to prove the innocence of said Conrado Roque, the Court holds that at this stage, it is already too late to try the criminal case all over again. Defendant's allegation that he relied on his belief that Conrado Roque would defend himself and they had sufficient proof to show that Roque was not guilty of the crime charged cannot be entertained. Defendant should have taken it to himself to aid in the defense of Conrado Roque. Having failed to take this step and the accused having been declared guilty by final judgment of the crime of homicide thru reckless imprudence, there appears no more way for the defendant to escape his subsidiary liability as provided for in Article 103 of the Revised Penal Code

Wherefore, the judgment appealed from, being in accordance with law, is hereby affirmed, with costs against defendant-appellant.

Bengzon, C. J., Bautista. Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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