

**NICASIO BERNALDES, SR., PERPETUA BESAS DE BERNALDES  
NICASIO BERNALDES, SR., PERPETUA BESAS DE BERNALDES SR., AS  
GUARDIAN-AD-LITEM, PLAINTIFFS, AND APPELLANTS, VS. BOHOL  
LAND TRA...**

*G.R. No. 18193. February 27, 1963*

Ponente: DIZON, J.

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**DIZON, J.:**

In a complaint for damages filed in the Court of First Instance of Bohol by appellants, the spouses Nicasio Bernaldes, Sr. and Perpetua Besas and their minor son, Jovito, against appellee, the Bohol Land Transportation Co., a domestic corporation engaged in business as a common carrier in said province, they alleged, in substance, that, in the afternoon of November 27, 1958, Jovito Bernaldes and his brother, Nicasio, boarded one of appellee's passenger trucks (B.L.T. Co. No. 322 with plate No. 1470) in the town of Guindulman, Bohol, bound for Tagbilaran of the same province; that on the way the bus fell off a deep precipice in barrio Balitbiton, municipality of Garcia-Hernandez, of the said province, resulting in the death of Nicasio and in serious physical injuries to Jovito.

Defendant moved for the dismissal of the complaint on two grounds, namely, that the cause of action alleged therein was barred by a prior judgment, and that it did not state a cause of action.

At the hearing on the motion to dismiss, it was established that in Criminal Case No. 2775 of the same court, Leonardo Balabag, driver of the bus involved in the accident, was charged with double homicide thru reckless imprudence but was acquitted on the ground that his guilt had not been established beyond reasonable doubt, and that appellees, through Attys. Amora and Tirol, intervened in the prosecution of said case and did not reserve the right to file a separate action for damages.

Relying on the case of *Maria C. Roa, vs. Segunda de la Cruz, et. al.*, 107 Phil., 8, promulgated February 13, 1960, the lower court sustained the motion on the ground of bar by prior judgment, and dismissed the case. Hence, this appeal.

The issues in this appeal are first, whether a civil action for damages against the owner of a public vehicle, based on breach of contract of carriage, may be filed after the criminal action instituted against the driver has been disposed of, if the aggrieved party did not reserve his right to enforce civil liability in a separate action, and second whether the intervention of the aggrieved party, through private prosecutors, in the prosecution of the criminal case against the driver—who was acquitted on the ground of insufficiency of evidence—will bar him from suing the latter's employer for damages for breach of contract, in an independent and separate action.

Article 31 of the New Civil Code expressly provides that when the civil action is based upon an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. This provision evidently refers to a civil action

based, not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract. Upon the other hand it is clear that a civil action based on the contractual liability of a common carrier is distinct from the criminal action instituted against the carrier or its employee based on the latter's criminal negligence. The first is governed by the provisions of the Civil Code, and not by those of the Revised Penal Code, and it being entirely separate and distinct from the criminal action, the same may be instituted and prosecuted independently of, and regardless of the result of the latter. (*Visayan Land Transportation Co. vs. Mejia, et al.*, 99 Phil., 50 ; 52 Off. Gaz. p. 4241).

The civil action instituted against appellee in this case is based on alleged culpa contractual incurred by it due to its failure to carry safely the late Nicasio Bernaldes and his brother Jovito to their place of destination, whereas the criminal action instituted against appellee's driver involved exclusively the criminal and civil liability of the latter arising from his criminal negligence. In other words, appellant's action concerned the civil liability of appellee as a common carrier, regardless of the liabilities of its driver who was charged in the criminal case. Therefore, as held in *Parker, et al. vs. Panlilio, et al.*, (91 Phil., 1), the failure, on the part of the appellants, to reserve their right to recover civil indemnity against the carrier can not in any way be deemed as a waiver, on their part, to institute a separate action against the latter based on its contractual liability, or on culpa aquiliana, under Articles 1902-1910 of the Civil Code. As a matter of fact, such reservation is already implied in the law which declares such action to be independent and separate from the criminal action. Moreover, it has been held that the duty of the offended party to make such reservation applies only to the defendant in the criminal action, not to persons secondarily liable (*Chaves et al. vs. Manila Electric* 31:47).

True, appellants, through private prosecutors, were allowed to intervene—whether properly or improperly we do not here decide—in the criminal action against appellee's driver, but if that amounted inferentially to submitting in said case their claim for civil indemnity, the claims could have been only against the driver but not against appellee who was not a party therein. As a matter of fact, however, in spite of appellee's statements to the contrary in its brief, there is no showing in the record before Us that appellants made of record their claim for damages against the driver or his employer; much less does it appear that they had attempted to prove such damages. The failure of the court to make any pronouncement in its decision concerning the civil liability of the driver and/or of his employer must therefore be due to the fact that the criminal action did not involve at all any claim for civil indemnity.

Lastly, as appellee's driver was acquitted only on reasonable doubt a civil action for damages against him may be instituted for the same act or omission (Rule 107, par. (d) ; Art. 29 New Civil Code). If such is the rule as against him, a fortiori it must in the case of his employer.

In view of all the foregoing, we find the appeal interposed by appellants to be meritorious. As a result, the order of dismissal appealed from is hereby set aside and the case is remanded to the lower court for further proceedings.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala and Makalintal, JJ, concur.

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