

>FLORENCIA QUQUILLO, PLAINTIFF AND APPELLANT, VS. PAZ BAYOT, DEFENDANT AND APPELLEE.*G.R. No. 45080. April 03, 1939*

Ponente: DIAZ, J.

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Florencia Duquillo appeals to this court from a judgment rendered by the Court of First Instance of Manila dismissing her action to recover from the defendant Paz Bayot damages in the amount of P75,000. She assigns the following alleged errors committed by the lower court in its decision:

- In declaring that James McGurk, and not Leopoldo Fernandez, employee and chauffeur of the appellee, was driving the truck TPU-1400, when it overturned, throwing away no Duquillo, who suffered injuries which later caused his death.
- In holding that the appellant's action is based on articles 1902 and 1903 of the Civil Code and not on articles 1101 et seq. of said Code in relation to the two first mentioned articles; and
- In not deciding the claim in favor of the appellant instead of dismissing the same.

It is clear, upon a reading of the record of the case, that the facts proven beyond doubt, because conclusively established by the evidence adduced at the trial, are briefly the following: Pio Duquillo, lather of the appellant, and provincial treasurer of Masbate, had to go to the municipality of Milagros with a big cargo. On April 17, 1937, he went to the house of Leopoldo Fernandez, chauffeur of one of the two trucks of Paz Bayot engaged in the transportation business, to ask him to drive him in one of said trucks to the municipality above-mentioned. Leopoldo Fernandez refused to do so, firstly, because it was Easter Sunday, a holy day, and Father Ayson, in charge of the appellee's trucks, did not permit him; and, secondly, because it was not he but Eusebio Quiro who had charge of the truck chosen by Pio Duquillo for its greater size and capacity. Pio Duquillo insisted on being driven to the municipality of Milagros in the truck under the charge of Eusebio Quiro, and, as an inducement, offered Leopoldo Fernandez P1 and promised to talk to Father Ayson so that he would not be scolded. While Father Ayson, then, was saying mass, the two of them, Pio Duquillo and Leopoldo Fernandez, left for Milagros in Eusebio Quiro's truck, driven by Fernandez. On the way, and at a short distance from the starting place, Fernandez saw his friend James McGurk, who was a complete stranger to the appellee's business, and invited him to have a pleasure ride with them to the municipality of Milagros. McGurk accepted the invitation and, on reaching Milagros, they found that there was a party going on. At the invitation of many friends, Leopoldo Fernandez drank tuba, an intoxicating beverage. In the afternoon of said day, Fernandez had a terrible headache, so he told Pio Duquillo that he would not be able to drive the truck as he was not feeling well. Pio Duquillo asked him to try his best and Fernandez did so, but after driving two kilometers, he again said that he was not feeling well and could not continue driving because his headache was getting worse. Then, Pio Duquillo told him to hand the steering wheel over to James McGurk, who was also in the truck, as McGurk knew how to drive, having driven other cars before. Shortly after McGurk started driving, the truck overturned with the result already mentioned.

Under the facts established the defendant cannot be held liable for anything. At the time of the accident, James McGurk was driving the truck, and he was not an employee of the defendant, nor did he have anything to do with the latter's business; neither the defendant nor Father Ayson, who was in charge of her business, consented to have any of her trucks driven on the day of the accident, as it was a holy day, and much less by a chauffeur who was not in charge of driving it; the use of the defendant's truck in the circumstances indicated was done without her consent or knowledge; it may, therefore, be said, that there was not the remotest contractual relation between the deceased Pio Duquillo and the defendant. It necessarily follows from all this that articles 1101 and following of the Civil Code, cited by the appellant, have no application in this case, and, therefore, the errors attributed to the inferior court are without basis.

Wherefore, finding the appealed decision in accordance with law, we affirm it in all its parts, without special pronouncement as to costs, inasmuch as the appellant was allowed to litigate as a pauper. So ordered.

Avancena, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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