

ROSALIO MARQUEZ ET AL., PLAINTIFFS AND APPELLEES, VS. BERNARDO CASTILLO, DEFENDANT AND APPELLANT.

G.R. No. 46237. September 27, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The plaintiffs and appellees surnamed Marquez sought to collect from the defendant and appellant, in the Court of First Instance of Tayabas, an indemnity in the sum of P4,900 for the death of Fernanda Marquez on whom they claim to be dependent for support, which death was caused by the reckless imprudence of Mariano Capulong, the defendant's chauffeur who ran over her on April 30, 1937, in the barrio of Lusacan of the municipality of Tiaong, Province of Tayabas. The plaintiff and appellee Maria Chomacera, in turn, sought to collect from the same defendant another indemnity in the sum of P100 for certain injuries received by her from the same cause and under the same circumstances which resulted in the death of said Fernanda Marquez.

The defendant defended himself by alleging that the death of Fernanda Marquez was due to the exclusive fault and negligence of the chauffeur Mariano Capulong, and that in the selection and employment of the latter, as such, in his service, he exercised the due diligence of a good father of a family, so that he should not be made to answer for the damages caused by the imprudence of said employee. To this defense of the defendant, who at the same time alleged in his answer a counterclaim seeking an indemnity in the sum of P300 for the annoyance caused him by the plaintiffs, by compelling him to defend himself in the case, thereby incurring expenses in order to secure the services of an attorney, the plaintiffs and appellees filed a reply contending that it is of no avail to the defendant to have exercised the due diligence of a good father of a family in the selection and employment of the chauffeur Mariano Capulong, claiming that the latter was duly licensed as such chauffeur, because, under the provisions of article 103 of the Revised Penal Code, he is, at any rate, bound subsidiarily to answer for the civil liability of said servant, subordinate, employee or chauffeur, for the reason that when the latter caused the death of the deceased Marquez, he was in the employ of the defendant.

During the trial, the parties filed a stipulation of facts which appears inserted in the appealed decision, as follows:

"That Mariano Capulong is the same accused convicted and sentenced in criminal case No. 7103 of this court, as evidenced by the judgment dated May 6, 1937.

* * * * *

"That said Mariano Capulong is insolvent, according to the investigations conducted by us to this date.

"1. That the defendant Bernardo Castillo has exercised due diligence as a good father of a family in selecting the chauffeur Mariano Capulong, and the plaintiffs admit that said chauffeur Mariano Capulong possesses an automobile driver's license which, for purposes of identification, we request to be marked as Exhibit A, as a conclusive evidence of his having exercised due diligence.

"2. That the defendant Bernardo Castillo is not engaged in any kind of business or industry on or about April

30, 1937, the date of the accident.

"3. That the defendant Bernardo Castillo was not riding in the car at the time of the accident, and he did not know that his car was taken by the chauffeur Mariano Capulong.

"4. That, by reason of this complaint, the defendant has suffered damages in the sum of P300 in order to prepare his defense.

"That Fernanda Marquez, that is, the offended party in criminal case No. 7103, was earning at the rate of P1 a day on the date of her death; and that said Fernanda Marquez was only 50 years old when she died.

"That the coplaintiff Maria Chomacera was earning at the rate of P1.20 a day at the time she received the injuries mentioned in the above-stated affidavit of Mariano Capulong, and that she incurred for her treatment expenses amounting to P100, as alleged in the complaint, while Fernanda Marquez spent for her burial and funeral the sum of P300, as alleged in the complaint."

It should be noted that in said stipulation, there is a provision appearing in paragraph 3 thereof, which reads as follows:

"That the defendant Bernardo Castillo was not riding in the car at the time of the accident, and he did not know that his car was taken by the chauffeur Mariano Capulong."

This fact decides the question because it clearly shows that the accident did not occur in the course of the performance of the duties or service for which said chauffeur Mariano Capulong had been hired. The defendant did not hire him to do as he pleased, using the defendant's car as if it were his own. His duties and service were confined to driving his master's car as the latter ordered him, and the accident did not take place under said circumstances. The subsidiary civil liability of the master, according to the provisions of article 103 of said Revised Penal Code, arises and takes place only when the servant, subordinate or employee commits a punishable criminal act while in the actual performance of his ordinary duties and service, and he is insolvent thereby rendering him incapable of satisfying by himself his own civil liability.

The general rule regarding the obligation to repair the damage done, besides the one established in article 103 of the Revised Penal Code, is that he, who by an act or omission causes the damage through his fault or negligence, is the one called upon to repair the same (art. 1902, Civil Code). This rule, which extends only to cases mentioned in articles 1903 to 1910 of said Code, is in no way applicable to the appellant, all the more so because, as the lower court makes clear in its decision, neither was he in his car at the time of the accident for which Mariano Capulong was sentenced to pay an indemnity of P500 to the heirs of the deceased Marquez, nor was he negligent in the selection of his chauffeur, since he hired in his service precisely one who is duly licensed to drive a car.

For the foregoing reasons, the appealed judgment is reversed, with the costs de oficio. So ordered.

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

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