

IRINEO YUMUL, PLAINTIFF AND APPELLANT, VS. ANTONIO JULIANO AND PAMPANGA BUS CO. (PAMBUSCO), DEFENDANTS AND APPELLEES.

G.R. No. 47690. April 28, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

This is a civil action brought by Ireneo Yumul to recover damages arising out of the death of his daughter, Teresita Yumul alias Teresita Miranda, who was struck by truck No. TPU-4958 of the Pampanga Bus Co. while it was being driven by Antonio Juliano along the provincial road at San Fernando, Pampanga, on or about April 10, 1936.

Antonio Juliano was previously prosecuted for the same offense and convicted upon a plea of guilty of homicide through reckless imprudence under section 67 (d) of Act No. 3992 of the Philippine Legislature otherwise known as the Motor Vehicle Law, in criminal case No. 5463 of the Court of First Instance of Pampanga. However, no pronouncement was made as to the civil indemnity to be paid by the accused as the private prosecution reserved its right to file a separate civil action. Thereupon, Ireneo Yumul filed the present action jointly against Antonio Juliano and the latter's employer, the Pampanga Bus Co., asking for civil damages in the sum of P2,000. Conrado Miranda, adopted father of the deceased, was joined as plaintiff in the amended complaint. Antonio Juliano was declared in default, and after hearing the evidence the Court of First Instance of Pampanga sentenced him to pay the plaintiffs the sum of P2,000, but absolved the Pampanga Bus Co. from the complaint on the ground that it is exempted from responsibility under article on the ground that is exempted from responsibility under article 1903 of the Civil Code, it appearing that it exercised all the diligence of a good father of a family to prevent the damage.

The Court of Appeals by resolution dated August 5, 1940, elevated the case to this Court for the reason that in his brief and assignment of errors, the appellant does not question the findings of fact of the lower court, but merely raised a question of law, i.e. that the lower court should not have applied article 1903 of the Civil Code, because the civil liability sought to be enforced in this case arose from a penal act and should, therefore, be governed by the Penal Code.

We find contention of the appellant to be well taken. Article 1092 of the Civil Code expressly provides that "Civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code." The lower court, therefore, should have applied the following pertinent provisions of the Revised Penal Code:

"ART. 102. Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments.—In default of the persons criminally liable, innkeepers, tavernkeepers and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees."

* * * * *

"ART. 103. Subsidiary civil liability of other persons.— The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

While it is true that the article 1903 of the Civil Code holds the owners or directors of an establishment or business "equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on the occasion of the performance of their duties" and provides that such liability "shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage," such liability, as held in the case of *Francisco vs. Onrubia*, 46 Phil., 327 refers to a fault or negligence not punishable by law. Article 1903 must be understood to be subordinated to article 1093 which provides that "those arising from wrongful or negligent acts or omissions not punishable by law shall be subject to the provisions of chapter second of title sixteen of this book," because article 1903 is precisely found in chapter 2, title 16, book 4, of the Civil Code. Moreover, as pointed out in the case of the *City of Manila vs. Manila Electric Co.*, 52 Phil., 586, "any different ruling would permit the master had exercised all the diligence in the selection and training of its servants to prevent the damage."

It is admitted by the Pampanga Bus Co. the Antonio Juliano was its employee and that he was the chauffeur of its truck No. TPU-4958 on or about April 10, 1936. the testimony of Sgt. Amado L. Cruz of the municipal police of San Fernando, Pampanga, who investigated the accident resulting in the death of Teresita Yumul alias Teresita Miranda, during the trial of the present action, as well as the information filed and the sentence rendered by the Court of First Instance of Pampanga in criminal case No. 5463, conclusively show that Antonio Juliano operated truck No. TPU-4958 of the Pampanga Bus Co. in a reckless, imprudent and negligent manner, at the time alleged in the complaint. It follows that the Pampanga Bus Co. is subsidiarily liable for the damages caused by the said Antonio Juliano under the provisions of article 102 and 103 of the Revised Penal Code, and it is no defense for the Pampanga Bus Co. to allege or prove that it exercised all the diligence of a good father of a family in the employment and training of its chauffeur Antonio Juliano in order to prevent the damage. While a great deal may be said on the nature and extent of a liability of entities engaged in undertakings of the kind of the appellee's business under the theory of incidental assumption of social risk and consequent liability, the result under the system established here and the doctrine of this Court is inevitable.

The judgment of the lower court is accordingly modified, and the defendant-appellee, Pampanga Bus Co., is hereby adjudged to be subsidiarily liable to the plaintiff-appellant, Irineo Yumul, for civil damages in the sum of P2,000, in the event that its codefendant, Antonio Juliano, is insolvent or is unable to satisfy the judgment, with costs in this instance against the defendant-appellee, Pampanga Bus Co.

So ordered.

Diaz, Moran, and Horrilleno, JJ., concur.

IMPERIAL, J.:

I concur in the result.

Judgment modified.

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