

FELIX LANUZO, PLAINTIFF-APPELLEE, VS. SY BON PING AND SALVADOR MENDOZA, DEFENDANTS-APPELLANTS.

G.R. No. 53064. September 25, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appeal certified to Us by the Court of Appeals[1] as it involves pure legal questions.

On November 25, 1969, a Complaint for damages was instituted in the Court of First Instance of Camarines Sur (Civil Case No. 6847) by plaintiff Felix Lanuzo against Sy Bon Ping, the owner and operator of a freight truck bearing Plate No. T-57266, and his driver, Salvador Mendoza. As alleged therein, at about five o'clock in the afternoon of July 24, 1969, while Salvador Mendoza was driving the truck along the national highway in the Barrio of San Ramon, Nabua, Camarines Sur, and because of his reckless negligence, he rammed into the residential house and store of plaintiff. As a result, the house and store were completely razed to the ground causing damage to plaintiff in the total amount of P13,000.00. Plaintiff averred that by reason thereof he became destitute as he lost his means of livelihood from the store which used to give him a monthly income of P300.00.

The defendants moved to dismiss on the ground that another action, Criminal Case No. 4250 for Damage to Property through Reckless Imprudence, was pending in the Municipal Court of Nabua, Camarines Sur, between the same parties for the same cause. Plaintiff opposed the dismissal stressing that he had made an express reservation in the criminal case to institute a civil action for damages separate and distinct from the criminal suit.

The lower Court denied the Motion to Dismiss for lack of merit.

On August 13, 1970, the trial Court rendered a default judgment in plaintiff's favor, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered (a) ordering the defendants to pay jointly and severally the amount of P13,000.00 as damages, resulting to the loss of the store including the merchandise for sale therein, the residential house of mixed materials, furnitures, clothing and household fixtures; (b) ordering the said defendants to pay jointly and severally P300.00 monthly from July 24, 1969 which represents plaintiff's monthly income from his store until the whole amount of P13,000.00 is fully paid; and (c) for attorney's fees an amount equivalent to 20% of the total amount claimed by the plaintiff, plus the costs of this suit."

Defendants' "Motion for Reconsideration and/or New Trial and To Set Aside Order of Default" was denied.

Upon elevation by the defendants of the case to the Court of Appeals (CA-G.R. No. 48399-R) they urged that the civil action was prematurely instituted in view of Rule 111, section 3, providing in part that "after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action." Additionally, they contended that even assuming their liability, the lower Court nevertheless committed an error in holding them jointly and severally liable.

On February 20, 1980, the Court of Appeals certified the case to this instance on pure questions of law.

We start from the fundamental premise, clearly enunciated as early as the case of *Barredo vs. Garcia, et al.*,^[2] that:

"A distinction exists between the civil liability arising from a crime and the responsibility for *cuasidelitos* or *culpa extra-contractual*. The same negligent act causing damages may produce civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for *cuasi-delito* or *culpa extra-contractual* under articles 1902-1910 of the Civil Code. Plaintiffs were free to choose which remedy to enforce."

Plaintiff's reservation before the Municipal Court in the criminal case of his right to institute a civil action separately is quoted hereunder in full:

"UNDERSIGNED offended party in the above-entitled case before this Honorable Court respectfully alleges:

"1. That this action which was commenced by the Chief of Police included in the complaint the claim of the undersigned for civil liability;

"2. That the undersigned is reserving his right to institute the civil action for damages, docketed as Civil Case No. 6847 of the Court of First Instance of Camarines Sur, against accused herein and his employer;

"WHEREFORE, it is respectfully prayed that reservation be made of record therein and that the civil aspect of the above-entitled case be not included herein.

x x x x x."^[3]

The terms of plaintiff's reservation clearly and unmistakably make out a case for quasi-delict. This is also evident from the recitals in plaintiff's Complaint averring the employer-employee relationship between the appellants, alleging that damages to the house and store were caused by the fact that Salvador Mendoza had driven the truck "recklessly, with gross negligence and imprudence, without observance of traffic rules and regulations and without regard to the safety of persons and property", and praying that appellants be held jointly and solidarily liable for damages. These are, basically, what should be alleged in actions based on quasi-delict.^[4]

As it is quite apparent that plaintiff had pre-dicated his present claim for damages on quasi-delict, he is not barred from proceeding with this independent civil suit. The institution of a criminal action can-not have the effect of interrupting the civil action based on quasi-delict.^[5] And the separate civil action for quasi-delict may proceed independently and regardless of the result of the criminal case,^[6] except that a plaintiff cannot recover damages twice for the same act or omission of the defendant.^[7]

The civil action referred to in Sections 3(a) and (b) of Rule 111 of the Rules of Court, which should be suspended after the institution of the criminal action, is that arising from delict, and not the civil action based on quasi-delict or *culpa aquiliana*.

We come now to the subject of liability of the appellants herein. For his own negligence in reck-lessly driving the truck owned and operated by his employer, the driver, Salvador Mendoza, is primarily liable under Article 2176 of the Civil Code. On the other hand, the liability of his employer, Sy Bon Ping, is also primary and direct under Article 2180 of the same Code, which explicitly provides:

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

For failure of the appellant Sy Bon Ping to rebut the legal presumption of his negligence in the selection and supervision of his employee,^[8] he is likewise responsible for the damages caused by the negligent act of his employee (driver) Salvador Mendoza, and his liability is primary and solidary.

"x x x What needs only to be alleged under the aforequoted provision (Article 2180, Civil Code) is that the employee (driver) has, by his negligence (quasi-delict) caused damage to make the employer, likewise, responsible for the tortious act of the employee, and his liability is, as earlier observed, primary and solidary"[9]

But although the employer is solidarily liable with the employee for damages, the employer may demand reimbursement from his employee (driver) for whatever amount the employer will have to pay the offended party to satisfy the latter's claim.[10]

WHEREFORE, the appealed decision is hereby affirmed.

Costs against defendants-appellants.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Resolution dated February 20, 1980 of the Eighth Division of the Court of Appeals, composed of JJ. Mariano A. Zosa (ponente), Samuel F. Reyes and Jorge R. Coquia.

[2] 73 Phil. 607 (1942).

[3] pp. 14-15, Record on Appeal.

[4] Poblete vs. Fabros, et al., 93 SCRA 200, 204 (1979).

[5] Capuno vs. Pepsi-Cola Bottling Co., 13 SCRA 658 (1965).

[6] Article 31, New Civil Code; Chan vs. Yatco, 103 Phil. 1126 (1958).

[7] Art. 2177, Civil Code.

[8] last paragraph, Article 2180 of the Civil Code.

[9] Poblete vs. Fabros, supra, citing Bachrach Motor Co., vs. Gamboa, 101 Phil. 1219 (1957); Malipol vs. Tan, 55 SCRA 202; Barredo vs. Garcia and Almario, 73 Phil. 607; Viluan vs. Court of Appeals, et al., 16 SCRA 742; Anuran, et al vs. Buño, et al., 17 SCRA 224.

[10] Article 2181, Civil Code; Malipol, etc. vs. Tan, et al., 55 SCRA 204-205 (1974).

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