

BERNARDINO JIMENEZ, PETITIONER, VS. CITY OF MANILA AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 71049. May 29, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of: (1) the decision* of the Intermediate Appellate Court in AC-G.R. No. 013887-CV Bernardino Jimenez v. Asiatic Integrated Corporation and City of Manila, reversing the decision** of the Court of First Instance of Manila, Branch XXII in Civil Case No. 96390 between the same parties, but only insofar as holding Asiatic Integrated Corporation solely liable for damages and attorney's fees instead of making the City of Manila jointly and solidarily liable with it as prayed for by the petitioner and (2) the resolution of the same Appellate Court denying his Partial Motion for Recon-sideration (Rollo, p. 2).

The dispositive portion of the Intermediate Appellate Court's decision is as follows:

"WHEREFORE, the decision appealed from is hereby REVERSED. A new one is hereby entered ordering the defendant Asiatic Integrated Corporation to pay the plaintiff P221.90 actual medical ex-penses, P900.00 for the amount paid for the operation and management of a school bus, P20,000.00 as moral damages due to pains, sufferings and sleepless nights and P10,000.00 as attorney's fees.

SO ORDERED." (p. 20, Rollo)

The findings of respondent Appellate Court are as follows:

The evidence of the plaintiff (petitioner herein) shows that in the morning of August 15, 1974 he, together with his neighbors, went to Sta. Ana public market to buy "bagoong" at the time when the public market was flooded with ankle deep rainwater. After purchasing the "bagoong" he turned around to return home but he stepped on an uncovered open-ing which could not be seen because of the dirty rainwater, causing a dirty and rusty four-inch nail, stuck inside the uncovered opening, to pierce the left leg of plaintiff-peti-tioner penetrating to a depth of about one and a half inches. After administering first aid treatment at a nearby drugstore, his companions helped him hobble home. He felt ill and developed fever and he had to be carried to Dr. Juanita Mascardo. Despite the medicine administered to him by the latter, his left leg swelled with great pain. He was then rushed to the Veterans Memorial Hospital where he had to be confined for twenty (20) days due to high fever and severe pain.

Upon his discharge from the hospital, he had to walk around with crutches for fifteen (15) days. His injury pre-vented him from attending to the school buses he is operating. As a result, he had to engage the services of one Bienvenido Valdez to supervise his business for an aggregate compensation of nine hundred pesos (P900.00). (Decision, AC-G.R. CV No. 01387, Rollo, pp. 13-20).

Petitioner sued for damages the City of Manila and the Asiatic Integrated Corporation under whose administra-tion the Sta. Ana Public Market had been placed by virtue of a Management and Operating Contract (Rollo, p. 47).

The lower court decided in favor of respondents, the dispositive portion of the decision reading:

"WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff dismissing the complaint with costs against the plaintiff. For lack of sufficient evidence, the counterclaims of the defend-ants are likewise dismissed." (Decision, Civil Case No. 96390, Rollo, p. 42).

As above stated, on appeal, the Intermediate Appel-late Court held the Asiatic Integrated Corporation liable for damages but absolved respondent City of Manila.

Hence this petition.

The lone assignment of error raised in this peti-tion is on whether or not the Intermediate Appellate Court erred in not ruling that respondent City of Manila should be jointly and severally liable with Asiatic Integrated Corporation for the injuries petitioner suffered.

In compliance with the resolution of July 1, 1985 of the First Division of this Court (Rollo, p. 29) respondent City of Manila filed its comment on August 13, 1985 (Rollo, p. 34) while petitioner filed its Reply on August 21, 1985. (Rollo, p. 51).

Thereafter, the Court in the resolution of Septem-ber 11, 1985 (Rollo, p. 62) gave due course to the petition and required both parties to submit simultaneous memoranda.

Petitioner filed his memorandum on October 1, 1985 (Rollo, p. 65) while respondent filed its memorandum on October 24, 1985 (Rollo, p. 82).

In the resolution of October 13, 1986, this case was transferred to the Second Division of this Court, the same having been assigned to a member of said Division (Rollo, p. 92).

The petition is impressed with merit.

As correctly found by the Intermediate Appellate Court, there is no doubt that the plaintiff suffered injuries when he fell into a drainage opening without any cover in the Sta. Ana Public Market. Defendants do not deny that plaintiff was in fact injured although the Asiatic Integrated Corporation tries to minimize the extent of the injuries, claiming that it was only a small puncture and that as a war veteran, plaintiff's hospitalization at the War Veteran's Hospital was free. (Decision, AC-G.R. CV No. 01387, Rollo, p. 6).

Respondent City of Manila maintains that it cannot be held liable for the injuries sustained by the petitioner because under the Management and Operating Contract, Asiatic Integrated Corporation assumed all responsibility for damages which may be suffered by third persons for any cause attri-butable to it.

It has also been argued that the City of Manila cannot be held liable under Article I, Section 4 of Republic Act No. 409 as amended (Revised Charter of Manila) which provides:

"The City shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other City Officer, to enforce the provisions of this chapter, or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or any other officers while enforcing or attempting to enforce said provisions."

This issue has been laid to rest in the case of *City of Manila v. Teotico* (22 SCRA 269-272 /1968/) where the Supreme Court squarely ruled that Republic Act No. 409 establishes a general rule regulating the liability of the City of Manila for "damages or injury to persons or property arising from the failure of city officers" to enforce the provisions of said Act, "or any other law or ordinance or from negligence" of the City "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions."

Upon the other hand, Article 2189 of the Civil Code of the Philippines which provides that:

"Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by any person by reason of defective conditions of roads, streets, bridges, public buildings and other public works under their control or supervision."

constitutes a particular prescription making "provinces, cities and municipalities x x x liable for damages for the death of, or injury suffered by any person by reason" -- specifically -- "of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision." In other words, Art. 1, sec. 4, R.A. No. 409 refers to liability arising from negligence, in general, regardless of the object, thereof, while Article 2189 of the Civil Code governs liability due to "defective streets, public buildings and other public works" in particular and is therefore decisive on this specific case.

In the same suit, the Supreme Court clarified further that under Article 2189 of the Civil Code, it is not necessary for the liability therein established to attach, that the defective public works belong to the province, city or municipality from which responsibility is exacted. What said article requires is that the province, city or municipality has either "control or supervision" over the public building in question.

In the case at bar, there is no question that the Sta. Ana Public Market, despite the Management and Operating Contract between respondent City and Asiatic Integrated Corporation remained under the control of the former.

For one thing, said contract is explicit in this regard, when it provides:

"-II-

That immediately after the execution of this contract, the SECOND PARTY shall start the painting, cleaning, sanitizing and repair of the public markets and talipapas and within ninety (90) days thereof, the SECOND PARTY shall submit a program of improvement, development, re-habilitation and reconstruction of the city public markets and talipapas subject to prior approval of the FIRST PARTY. (Rollo, p. 44)

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"-VI?

That all present personnel of the City public markets and talipapas shall be retained by the SECOND PARTY as long as their services remain satisfactory and they shall be extended the same rights and privileges as heretofore enjoyed by them. Provided, however, that the SECOND PARTY shall have the right, subject to prior approval of the FIRST PARTY to discharge any of the present employees for cause. (Rollo, p. 45).

"-VII-

That the SECOND PARTY may from time to time be required by the FIRST PARTY, or his duly authorized representative or representatives, to report on the activities and operation of the City public markets and talipapas and the facilities and conveniences installed therein, particularly as to their cost of construction, operation and maintenance in connection with the stipulations contained in this Contract." (Ibid.)

The fact of supervision and control of the City over subject public market was admitted by Mayor Ramon Bagat-sing in his letter to Secretary of Finance Cesar Virata which reads:

"These cases arose from the controversy over the Management and Operating Contract entered into on December 28, 1972 by and between the City of Manila and the Asiatic Integrated Corporation, whereby in consideration of a fixed service fee, the City hired the services of the said corporation to undertake the physical management, maintenance, rehabilitation and development of the City's public markets and 'Talipapas'

subject to the control and supervision of the City.

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"It is believed that there is nothing incongruous in the exercise of these powers vis-a-vis the existence of the contract, inasmuch as the City retains the power of supervision and control over its public markets and talipapas under the terms of the contract." (Exhibit 7-A.) (Underscoring supplied.) (Rollo, p. 75).

In fact, the City of Manila employed a market master for the Sta. Ana Public Market whose primary duty is to take direct supervision and control of that particular market, more specifically, to check the safety of the place for the public.

Thus the Asst. Chief of the Market Division and Deputy Market Administrator of the City of Manila testified as follows:

"Court : This market master is an employee of the City of Manila?

Mr. Ymson : Yes, Your Honor.

Q : What are his functions?

A : Direct supervision and control over the market area assigned to him". (T.s.n., pp. 41-42, Hearing of May 20, 1977.)

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"Court : As far as you know there is or is there any specific employee assigned with the task of seeing to it that the Sta. Ana Market is safe for the public?

"Mr. Ymson : Actually, as I stated, Your Honor, that the Sta. Ana has its own market master. The primary duty of market master is to make the direct supervision and control of that particular market, the check or verifying whether the place is safe for public safety is vested in the market master." (T.s.n., pp. 24-25, Hearing of July 27, 1977.) (Underscoring supplied.) (Rollo, p. 76).

Finally, Section 30(g) of the Local Tax Code as amended provides:

"The treasurer shall exercise direct and immediate supervision, administration and control over public markets and the personnel thereof, including those whose duties concern the maintenance and up-keep of the market and ordinances and other pertinent rules and regulations." (Underscoring supplied.) (Rollo, p. 76)

The contention of respondent City of Manila that petitioner should not have ventured to go to Sta. Ana Public Market during a stormy weather is indeed untenable. As observed by respondent Court of Appeals, it is an error for the trial court to attribute the negligence to herein petitioner. More specifically stated, the findings of appellate court are as follows:

"x x x The trial court even chastised the plaintiff for going to market on a rainy day just to buy bagoong. A customer in a store has the right to assume that the owner will comply with his duty to keep the premises safe for customers. If he ventures to the store on the basis of such assumption and is injured because the owner did not comply with his duty, no negligence can be imputed to the customer." (Decision, AC G.R. CV No. 01387, Rollo, p. 19).

As a defense against liability on the basis of a quasi-delict, one must have exercised the diligence of a good father of a family. (Art. 1173 of the Civil Code).

There is no argument that it is the duty of the City of Manila to exercise reasonable care to keep the public market reasonably safe for people frequenting the place for their marketing needs.

While it may be conceded that the fulfillment of such duties is extremely difficult during storms and floods, it must however, be admitted that ordinary precautions could have been taken during good weather to minimize the dangers to life and limb under those difficult circumstances.

For instance, the drainage hole could have been placed under the stalls instead of on the passage ways. Even more important is the fact, that the City should have seen to that the openings were covered. Sadly, the evidence indicates that long before petitioner fell into the opening, it was already uncovered, and five (5) months after the incident happened, the opening was still uncovered. (Rollo, pp. 57; 69). Moreover, while there are findings that during floods the vendors remove the iron grills to hasten the flow of water (Decision, AC-G.R. CV No. 01387, Rollo, p. 17), there is no showing that such practice has ever been prohibited much less penalized by the City of Manila. Neither was it shown that any sign had been placed thereabouts to warn passers-by of the impending danger.

To recapitulate, it appears evident that the City of Manila is likewise liable for damages under Article 2189 of the Civil Code, respondent City having retained control and supervision over the Sta. Ana Public Market and as tort-feasor under Article 2176 of the Civil Code on quasi-delicts.

Petitioner had the right to assume that there were no openings in the middle of the passageways and if any, that they were adequately covered. Had the opening been covered, petitioner could not have fallen into it. Thus the negligence of the City of Manila is the proximate cause of the injury suffered, the City is therefore liable for the injury suffered by the petitioner.

Respondent City of Manila and Asiatic Integrated Corporation being joint tort-feasors, are solidarily liable under Article 2194 of the Civil Code.

PREMISES CONSIDERED, the decision of the Court of Appeals is hereby MODIFIED, making the City of Manila and the Asiatic Integrated Corporation solidarily liable to pay the plaintiffs P221.90 actual medical expenses, P900.00 for the amount paid for the operation and management of the school bus, P20,000.00 as moral damages due to pain, sufferings and sleepless nights and P10,000.00 as attorney's fees.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

* Penned by Justice Jorge R. Coquia and concurred in by Justices Mariano A. Zosa, Florelia Castro-Bartolome, and Bienvenido C. Ejercito.

** Written by Judge Amador T. Vallejos.

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