

**SPOUSES FEDERICO FRANCO AND FELICISIMA R. FRANCO,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, ANTONIO
REYES, MRS. SUSAN CHUAY AND LOLITA LUGUE, RESPONDENTS.**

G.R. No. 71137. October 05, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The instant petition for review of a decision of the Court of Appeals deals mainly with the nature of an employer's liability for his employee's negligent act.

At about 7:30 in the evening of October 18, 1974, Macario Yuro swerved the northbound Franco Bus with Plate No. XY-320-PUB he was driving to the left to avoid hitting a truck with a trailer parked facing north along the cemented pavement of the MacArthur Highway at Barrio Talaga, Capas, Tarlac, thereby taking the lane of an incoming Isuzu Mini Bus bearing Plate No. YL-735 being driven by one Magdaleno Lague and making a collision between the two (2) vehicles an unavoidable and disastrous eventuality.

Dragged fifteen (15) meters from the point of impact (midway the length of the parked truck with trailer), the mini bus landed right side down facing south in the canal of the highway, a total wreck. The Franco Bus was also damaged but not as severely. The collision resulted in the deaths of the two (2) drivers, Macario Yuro and Magdaleno Lague, and two (2) passengers of the mini bus, Romeo Bue and Fernando Chuay.

Consequently, Antonio Reyes, the registered owner of the Isuzu Mini Bus, Mrs. Susan Chuay, the wife of victim Fernando Chuay, and Mrs. Lolita Lague, the wife of driver-victim Magdaleno Lague, filed an action for damages through reckless imprudence before the Court of First Instance of Pampanga and Angeles City, Branch IV, docketed as Civil Case No. 2154 against Mr. & Mrs. Federico Franco, the owners and operators of the Franco Transportation Company. The complaint alleged that: (a) the recklessness and imprudence of the Franco Bus driver caused the collision which resulted in his own death and that of the mini bus driver and two (2) other passengers thereof; (b) that as a consequence of the vehicular mishap, the Isuzu Mini Bus became a total wreck resulting in actual damages amounting to P50,000.00 and the loss of an average net income of P120.00 daily or P3,600.00 monthly multiplied by a minimum of one more year of serviceability of said mini bus or P40,200.00; and, (c) that in view of the death of the three (3) passengers aforementioned, the heirs of each should be awarded a minimum of P12,000.00 and the expected average income of P6,000.00 each of the driver and one of the passengers and P12,000.00 of the Chinese businessman passenger.

In answer to the complaint, defendants set up, among others, the affirmative defense that as owners and operators of the Franco Transportation Company, they exercised due diligence in the selection and supervision of all their employees, including the deceased driver Macario Yuro.

Said defense was, however, rejected by the trial court in its decision^[1] dated May 17, 1978, for the reason that the act of the Franco Bus driver was a negligent act punishable by law resulting in a civil obligation arising from Article 103 of the Revised Penal Code and not from Article 2180 of the Civil Code. It said: "This is a case of

criminal negligence out of which civil liability arises, and not a case of civil negligence and the defense of having acted like a good father of a family or having trained or selected the drivers of his truck is no defense to avoid civil liability"[2]. On this premise, the trial court ruled as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, Antonio Reyes, Lolita Lugue, and Susan Chuay, and against the defendants Mr. and Mrs. Federico Franco, ordering the latter:

(1) To pay Antonio Reyes, actual and compensatory damages in the amount of P90,000.00 for the Isuzu Mini Bus;

(2) To pay Lolita Lugue, the widow of Magdaleno Lugue, actual and compensatory damages in the total sum of P18,000.00;

(3) To pay Susan Chuay, the widow of Fernando Chuay, actual and compensatory damages in the total sum of P24,000.00; and

(4) To pay attorney's fee in the amount of P5,000.00;

All with legal interests from the filing of this suit on November 11, 1974 until paid; and the costs of this suit.

SO ORDERED.[3]

On appeal by herein petitioners as defendants-appellants, respondent appellate court, agreeing with the lower court, held that defendants-appellants' driver who died instantly in the vehicular collision, was guilty of reckless or criminal imprudence punishable by law in driving appellants' bus; that the civil obligation of the appellants arises from Article 103 of the Revised Penal Code resulting in the subsidiary liability of the appellants under the said provision[4]; that the case subject of appeal is one involving culpable negligence out of which civil liability arises and is not one of civil negligence[5]; and that there is nothing in Articles 102 and 103 of the Revised Penal Code which requires a prior judgment of conviction of the erring vehicle driver and his obligation to pay his civil liability before the said provisions can be applied.[6] Respondent appellate court increased the award of damages granted by the lower court as follows:

WHEREFORE, the decision appealed from is hereby modified as follows:

1. To pay Susan Chuay, widow of Fernando Chuay, the sum of P30,000.00 for the latter's death and P112,000.00 for loss of earning capacity;

2. To pay Lolita Lugue, widow of Magdaleno Lugue, the sum of P30,000.00 for the latter's death and P62,000.00 for loss of earning capacity. The rest of the judgment appealed from is affirmed. Costs against defendants-appellants.

SO ORDERED.[7]

On April 1, 1985, petitioners filed a motion for reconsideration of the aforesaid respondent appellate court's decision dated January 2, 1985 but the same was denied on May 13, 1985.

Hence, the instant petition raising two (2) legal questions: first, whether the action for recovery of damages instituted by herein private respondents was predicated upon crime or quasi-delict; and second, whether respondent appellate court in an appeal filed by the defeated parties, herein petitioners, may properly increase the award of damages in favor of the private respondents Chuay and Lugue, prevailing parties in the lower court, who did not appeal said court's decision.

Petitioners contend that the allegations in paragraph 9 of the Amended Complaint[8] of herein private respondents as plaintiffs in Civil Case No. 2154 unequivocally claim that the former as the employers of Macario Yuro, the

driver of the Franco Bus who caused the vehicular mishap, are jointly and severally liable to the latter for the damages suffered by them which thus makes Civil Case No. 2154 an action predicated upon a quasi-delict under the Civil Code subject to the defense that the employer exercised all the diligence of a good father of a family in the selection and supervision of their employees.

We find merit in this contention. Distinction should be made between the subsidiary liability of the employer under the Revised Penal Code and the employer's primary liability under the Civil Code which is quasi-delictual or tortious in character. The first type of liability is governed by Articles 102 and 103 of the Revised Penal Code which provide as follows:

Art. 102. Subsidiary civil liability of innkeepers, tavern-keepers and proprietors of establishments.- In default of the persons criminally liable, innkeepers, tavern-keepers, 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 regulations shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposits of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's 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 the servants, pupils, workmen, apprentices, or employees in the discharge of their duties;

while the second kind is governed by the following provisions of the Civil Code:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

Art. 2180. The obligations imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x

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.

x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Under Article 103 of the Revised Penal Code, liability originates from a delict committed by the employee who is primarily liable therefor and upon whose primary liability his employer's subsidiary liability is to be based. Before the employer's subsidiary liability may be proceeded against, it is imperative that there should be a criminal action

whereby the employee's criminal negligence or delict and corresponding liability therefor are proved. If no criminal action was instituted, the employer's liability would not be predicated under Article 103.[9]

In the case at bar, no criminal action was instituted because the person who should stand as the accused and the party supposed to be primarily liable for the damages suffered by private respondents as a consequence of the vehicular mishap died. Thus, petitioners' subsidiary liability has no leg to stand on considering that their liability is merely secondary to their employee's primary liability. Logically therefore, recourse under this remedy is not possible.

On the other hand, under Articles 2176 and 2180 of the Civil Code, liability is based on culpa aquiliana which holds the employer primarily liable for tortious acts of its employees subject, however, to the defense that the former exercised all the diligence of a good father of a family in the selection and supervision of his employees.

Respondent appellate court relies on the case of *Arambulo*, supra, where it was held that the defense of observance of due diligence of a good father of a family in the selection and supervision of employees is not applicable to the subsidiary liability provided in Article 20 of the Penal Code (now Article 103 of the Revised Penal Code). By such reliance, it would seem that respondent appellate court seeks to enforce the subsidiary civil liability of the employer without a criminal conviction of the party primarily liable therefore. This is not only erroneous and absurd but is also fraught with dangerous consequences. It is erroneous because the conviction of the employee primarily liable is a condition sine qua non for the employer's subsidiary liability[10] and, at the same time, absurd because we will be faced with a situation where the employer is held subsidiarily liable even without a primary liability being previously established. It is likewise dangerous because, in effect, the employer's subsidiary liability would partake of a solidary obligation resulting in the law's amendment without legislative sanction.

The Court in the aforecited *M.D. Transit* case went further to say that there can be no automatic subsidiary liability of defendant employer under Article 103 of the Revised Penal Code where his employee has not been previously criminally convicted.

Having thus established that Civil Case No. 2154 is a civil action to impose the primary liability of the employer as a result of the tortious act of its alleged reckless driver, we confront ourselves with the plausibility of defendants' defense that they observed due diligence of a good father of a family in the selection and supervision of their employees.

On this point, the appellate court has unequivocally spoken in affirmation of the lower court's findings, to wit:

Anyway, a perusal of the record shows that the appellants were not able to establish the defense of a good father of a family in the supervision of their bus driver. The evidence presented by the appellants in this regard is purely self-serving. No independent evidence was presented as to the alleged supervision of appellants' bus drivers, especially with regard to driving habits and reaction to actual traffic conditions. The appellants in fact admitted that the only kind of supervision given the drivers referred to the running time between the terminal points of the line (t.s.n., September 16, 1976, p. 21) Moreover, the appellants who ran a fleet of 12 buses plying the Manila-Laoag line, have only two inspectors whose duties were only ticket inspection. There is no evidence that they are really safety inspectors.[11]

Basically, the Court finds that these determinations are factual in nature. As a painstaking review of the evidence presented in the case at bar fails to disclose any evidence or circumstance of note sufficient to overrule said factual findings and conclusions, the Court is inclined to likewise reject petitioners' affirmative defense of due diligence. The wisdom of this stance is made more apparent by the fact that the appellate court's conclusions are based on the findings of the lower court which is in a better position to evaluate the testimonies of the witnesses

during trial. As a rule, this Court respects the factual findings of the appellate and trial courts and accord them a certain measure of finality.[12] Consequently, therefore, we find petitioners liable for the damages claimed pursuant to their primary liability under the Civil Code.

On the second legal issue raised in the instant petition, we agree with petitioners' contention that the Intermediate Appellate Court (later Court of Appeals) is without jurisdiction to increase the amount of damages awarded to private respondents Chuay and Luge, neither of whom appealed the decision of the lower court. While an appellee who is not also an appellant may assign error in his brief if his purpose is to maintain the judgment on other grounds, he cannot ask for modification or reversal of the judgment or affirmative relief unless he has also appealed.[13] For failure of plaintiffs-appellees, herein private respondents, to appeal the lower court's judgment, the amount of actual damages cannot exceed that awarded by it.[14]

Furthermore, the records[15] show that plaintiffs-private respondents limited their claim for actual and compensatory damages to the supposed average income for a period of one (1) year of P6,000.00 for the driver Magdaleno Luge and P12,000.00 for the Chinese businessman Fernando Chuay. We feel that our award should not exceed the said amounts.[16]

However, the increase in awards for indemnity arising from death to P30,000.00 each remains, the same having been made in accordance with prevailing jurisprudence decreeing such increase in view of the depreciated Philippine currency.[17]

WHEREFORE, the decision of the Court of Appeals is hereby modified decreasing the award to private respondents of actual and compensatory damages for loss of average income for the period of one year to P6,000.00 for the deceased Magdaleno Luge and P12,000.00 for the deceased Fernando Chuay. The rest of the judgment appealed from is hereby affirmed. Costs against the private respondents. This decision is immediately executory.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.
Gutierrez, Jr., J., on leave.

[1] Record on Appeal, p. 35, Rollo, p. 23.

[2] Record on Appeal, p. 60, Rollo, p. 23.

[3] Ibid, at pp. 61-62

[4] Arambulo vs. Manila Electric Company, 55 Phil. 75, 77

[5] City of Manila vs. Manila Electric Company, 52 Phil. 586, 594-595

[6] Court of Appeals Decision, Rollo, pp. 26-27.

[7] Ibid, at p. 29.

[8] Record on Appeal, p. 6, Rollo, p. 23

[9] Rakes v. Atlantic Gulf & Pacific Co., 7 Phil. 359, 364.

[10] M.D. Transit and Taxi Co., Inc. vs. Court of Appeals, 22 SCRA 559.

[11] CA decision, Rollo, pp. 27-28.

[12] Agalo-os vs. Intermediate Appellate Court, 149 SCRA 546.

[13] La Campana Food Products, Inc. vs. PCI Bank, 142 SCRA 394.

[14] Aguilar vs. Chan, 144 SCRA 673.

[15] Complaint, pp. 5-6, Record on Appeal, Rollo, p. 23.

[16] Makabali vs. CA, et al., G.R. No. L-46877, January 22, 1988.

[17] People vs. Cruz, 142 SCRA 576.

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