

JOSE E. GENSON, PETITIONER, VS. SPS. EDUARDO ADARLE AND SHERLITA MARI-ON, AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 73928. August 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review which seeks to set aside the decision in CA-G.R. No. 00783 on the ground that the findings of the respondent Court of Appeals are based on misapprehension of facts and conflict with those of the trial court and that the conclusions drawn therefrom are based on speculations and conjectures.

Arturo Arbatin was the successful bidder in the sale at public auction of junk and other unserviceable government property located at the compound of the Highway District Engineer's Office of Roxas City. Private respondent Eduardo Adarle was hired as a laborer by Arbatin to gather and take away scrap iron from the said compound with a daily wage of P12.00 or about P312.00 a month.

On September 8, 1979, at 4:00 o'clock in the morning, on a Saturday and a non-working day, while the private respondent was tying a cable to a pile of scrap iron to be loaded on a truck inside the premises of the compound, and while the bucket of the payloader driven by Ramon Buensalido was being raised, the bucket suddenly fell and hit Adarle on the right back portion of his head just below the nape of his neck. Adarle was rushed to the St. Anthony Hospital, Roxas City. According to the medical certificate issued by the attending physician, the private respondent suffered the following injuries:

"1) Comminuted fracture of the vertebral body of 13 with extreme Kyphosis of the segment by x-ray.

"2) Cord compression 2nd to the injury with paralysis of the lower extremity, inability to defecate and urinate." (Exh. A, Exhibits for the plaintiff-appellant, Original Records.)

The medical certificate also reported that:

"The patient recovered the use of his urinary bladder and was able to defecate 2 months after surgery. He is paralyzed from the knee down to his toes. He can only sit on a wheel chair. The above residual damage is permanent 2nd to the injury incurred by Mr. Adarle. He is still confined in the Hospital." (idem.)

While still in the hospital, the private respondent instituted the action below for damages against Arbatin, his employer; Buensalido, the payloader operator; Candelario Marcelino, the civil engineer; and petitioner, the Highway District Engineer.

During the trial on the merits, the petitioner put up the defense that he had no knowledge of or participation in the accident and that, when it happened, he was not present in the government compound. Apart from the fact that it was a Saturday and a non-working day, he was in Iloilo. As part of his evidence, the petitioner presented a memorandum directed to a certain Mr. Orlando Panaguaiton ordering the latter to take charge of the district until

his return (Exh. 1).

The trial court found that, with the exception of the petitioner, all of the defendants were present at the Highway's compound when the accident occurred. However, it still adjudged the petitioner liable for damages because the petitioner was supposed to know what his men do with their government equipment within an area under his supervision.

Thus, on January 19, 1982, the trial court rendered a decision finding all the defendants liable for damages under Articles 1172 and 2176 of the New Civil Code. The dispositive portion of the decision reads:

"WHEREFORE, this court orders the defendants to pay to plaintiff the amounts stated in the complainant's prayer as follows:

"Ordering the defendants jointly and severally to pay the plaintiff the sum of P312.00 monthly from September 8, 1979 until his release from the hospital.

"Ordering the defendants jointly and severally to pay the plaintiff the sum of P7,410.63 for hospital expenses up to January 14, 1980 and an additional amount for further hospitalization until the release of plaintiff from the hospital;

"Ordering the defendants jointly and severally to pay the plaintiff the sum of at least P100,000.00 as actual and compensatory damages, considering that plaintiff Eduardo Adarle is totally incapacitated for any employment for life;

"Ordering the defendants jointly and severally to pay the plaintiff the sum of P20,000.00 as moral damages and another sum for exemplary damages which we leave to the sound discretion of the Honorable Court;

"Ordering the defendants jointly and severally to pay the plaintiff the sum of P5,000.00 as attorney's fees." (pp. 129-130, Original Records).

The petitioner appealed to the Intermediate Appellate Court which affirmed the decision of the trial court and further ordered the defendants to pay P5,000.00 exemplary damages. Defendant Candelario Marcelino was, however, absolved from liability.

In its decision, the appellate court ruled:

"That payloader owned by the Government, as found by the lower court, should not have been operated that Saturday, September 8, 1979, a Saturday, a non-working holiday. There is no official order from the proper authorities authorizing Arbatin and plaintiff to work and Buensalido to operate the payloader on that day inside the Highway compound. Thereabouts, we can logically deduce that Arbatin and plaintiff went to the compound to work with the previous knowledge and consent of Highway District Engineer Jose E. Genson. And allowed him, probably upon the request of Arbatin. We have noted that Genson testified that his office does not authorize work on Saturdays.

"Genson testified that he was in Iloilo from September 9 and 10, 1979. The accident occurred on September 8, in the morning. In his answer, Genson did not allege his presence in Iloilo on September 9 and 10. x x x.

"We fully concur with the lower court's conclusions regarding the physical presence of appellants inside the compound on that fateful day, pursuant to a previous understanding with Arbatin for plaintiff to work on the scrap iron and for Buensalido to operate the payloader inside the compound. Arbatin and plaintiff would not go to the compound on that Saturday, if there was no previous understanding with Genson and Buensalido.

"The liability of Genson is based on fault, intentional and voluntary or negligent (*Elcano v. Hill*, 77 SCRA 106; *Jimena v. Lincallo*, 63 O.G. 1115, 8 C. A.R. 2567). He gave permission to Arbatin, plaintiff and Buensalido to work on Saturday, a non-working day, in contravention of his office' rules and regulations

outlawing work on Saturdays." (pp. 29-30, Rollo)

In this present petition, the petitioner contends that the appellate court committed a palpable error when it ruled that the petitioner was present when the accident happened and that he had given permission to the other defendants to work on a Saturday, a non-working day. The petitioner argues that considering these were the facts relied upon by the said court in holding that he was negligent and thus liable for damages, such a conclusion, is without basis.

The petitioner further contends that the appellate court erred in not holding that the suit against the petitioner was, in effect, a suit against the government and, therefore, should be dismissed under the principle of non-suability of the state.

As regards the petitioner's second contention, we hold that the petitioner's identification as the Highway District Engineer in the complaint filed by the private respondent did not result in the said complaint's becoming a suit against the government or state.

In *Belizar v. Brazas*, (2 SCRA 526), we ruled that "the fact that the duties and positions of the defendants are indicated does not mean that they are being sued in their official capacities, especially as the present action is not one against the Government". Furthermore, the accident in the case at bar happened on a non-working day and there was no showing that the work performed on that day as authorized by the government. While the equipment used belongs to the Government, the work was private in nature, for the benefit of a purchaser of junk. As we have held in the case of *Republic v. Palacio* (23 SCRA 899, 906):

xxx xxx xxx

"The ISU liability thus arose from tort and not from contract; and it is a well-entrenched rule in this jurisdiction, embodied in Article 2180 of the Civil Code of the Philippines, that the State is liable only for torts caused by its special agents, specially commissioned to carry out the acts complained of outside of such agent's regular duties (*Merritt v. Insular Government*, supra; *Rosete v. Auditor General*, 81 Phil. 453). There being no proof that the making of the tortious inducement was authorized, neither the State nor its funds can be made liable therefor."

Therefore, the defense of the petitioner that he cannot be made liable under the principle of non-suability of the state cannot be sustained.

With regard to the main contention of the petitioner that the appellate court based its conclusions on an erroneous finding of fact, we agree with him that the appellate court's finding that he was present within the premises when the accident happened is not supported by evidence indisputably showing that he was indeed there.

Since the evidence fails to establish petitioner Genson's presence when the payloader's bucket fell on the head of Mr. Adarle, any liability on his part would be based only on his alleged failure to exercise proper supervision over his subordinates (See *Umali v. Bacani*, 69 SCRA 263, 267-268).

According to the trial court, Mr. Genson authorized work on a Saturday when no work was supposed to be done. It stated that the petitioner should know what his men do with their government equipment and he should neither be lax nor lenient in his supervision over them.

The petitioner contends that:

"1. No evidence on record exists that Genson gave authority to Adarle and Arbatin, either verbally or in writing, to enter and work inside the Highways Compound on September 8, 1979;

"2. Genson never knew or met Arbatin until the trial of the case. This fact was never denied by Arbatin nor

rebutted by Adarle. How then could Genson have ordered or allowed Arbatin to enter the Highways Compound with Adarle?

"3. Adarle himself repeatedly admitted that Arbatin, his employer, gave him the instructions to enter the compound, thus:

"Q. Now particularly on September 8, 1979, did Arbatin ask you to go to the compound in the Highway?

"A. Yes sir.

"Q. Are you sure of that?

"A. Yes, sir.

"Q. Where did he say that to you?

"A. We went to the Highway compound for many times already and that was the time when I met the incident.

"Q. The particular day in question September 8, 1979, did you see Arturo Arbatin and he asked you to go to the compound on that day?

"A. That date was included on the first day when 'he instructed us to gather scrap iron until that work could be finished.' (pp. 25-26, tsn., October 10, 1980) (Emphasis supplied)

"Q. Who told you to work there?

"A. 'Through the instruction of Arturo Arbatin.' (p. 32, tsn., Oct. 10, 1980) (Emphasis supplied) (pp. 12--13, Rollo).

Insofar as work on a Saturday is concerned, and assuming Mr. Genson verbally allowed it, we see nothing wrong in the petitioner's authorizing work on that day. As a matter of fact, it could even be required that the hauling of junk and unserviceable equipment sold at public auction must be done on non-working days. The regular work of the District Engineer's office would not be disturbed or prejudiced by a private bidder bringing in his trucks and obstructing the smooth flow of traffic and the daily routine within the compound. Obviously, it would also be safer for all concerned to effect the clearing of the junk pile when everything is peaceful and quiet.

There is no showing from the records that it is against regulations to use government cranes and payloaders to load items sold at public auction on the trucks of the winning bidder. The items were formerly government property. Unless the contract specifies otherwise, it may be presumed that all the parties were in agreement regarding the use of equipment already there for that purpose. Of course, it would be different if the junk pile is in a compound where there is no equipment for loading or unloading and the cranes or payloaders have to be brought there.

There is likewise no sufficient basis for the "master-servant" doctrine in tort law to apply. Buensalido was not working overtime as a government employee. It is doubtful if the district engineer can be considered an "employer" for purposes of tort liability who may be liable even if he was not there. No evidence was presented to show that an application for overtime work or a claim for overtime pay from the district engineer's office was ever filed. It is more logical to presume that Buensalido, the operator of the payloaders, was trying to earn a little money on the side from the junk buyer and that his presence in the compound on that Saturday was a purely private arrangement. From the records of this case, we are not disposed to rule that a supervisor who tolerates his subordinates to moonlight on a non-working day in their office premises can be held liable for everything that happens on that day. It would have been preferable if Mr. Arbatin brought his own payloaders operator and perhaps, his own equipment but we are not dealing with sound office practice in this case. The issue before us is

subsidiary liability for tort committed by a government employee who is moonlighting on a non-working day.

This Court ruled in *Dumlao v. Court of Appeals* (114 SCRA 247, 251):

"Nevertheless, it is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, (*Mindanao realty Corp. v. Kintanar*, 6 SCRA 814) or beyond the scope of his authority or jurisdiction. (*the Philippine Racing Club v. Bonifacio*, G.R. No. L-11844, August 31, 1960) The question, therefore, is whether petitioner did act in any of the manner aforesaid.

"Petitioner contends that, contrary to the holding of the respondent Court of Appeals, he was not sued in his personal capacity, but in his official capacity. Neither was malice or bad faith alleged against him in the complaint, much less proven by the evidence, as the respondent court made no such finding of malice or bad faith.

Examining the allegations of the complaint and reviewing the evidence it would indeed be correct to say that petitioner was sued in his official capacity, and that the most that was imputed to him is act of culpable neglect, inefficiency and gross indifference in the performance of his official duties. Verily, this is not imputation of bad faith or malice, and what is more was not convincingly proven."

According to the respondent court, "Genson and Buensalido divested themselves of their public positions and privileges to accommodate an acquaintance or probably for inordinate gain." (p. 31, Rollo).

There is no showing from the records that Genson received anything which could be called "inordinate gain". It is possible that he permitted work on a Saturday to accommodate an acquaintance but it is more plausible that he simply wanted to clear his compound of junk and the best time for the winning bidder to do it was on a non-working day.

At any rate, we see no malice, bad faith, or gross negligence on the part of Genson to hold him liable for the acts of Buensalido and Arbatin.

WHEREFORE, the decision of the Intermediate Appellate Court is hereby REVERSED and SET ASIDE. The complaint against Jesus Genson is DISMISSED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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