

FILAMER CHRISTIAN INSTITUTE, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, HON. ENRIQUE P. SUPLICO, IN HIS CAPACITY AS JUDGE OF THE REGIONAL TRIAL COURT, BRANCH XIV, ROXAS ...

G.R. No. 75112. August 17, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The private respondents, heirs of the late Pontenciano Kapunan, seek reconsideration of the decision rendered by this Court on October 16, 1990 (*Filamer Christian Institute v. Court Appeals*, 190 SCRA 477) reviewing the appellate court's conclusion that there exists an employer-employee relationship between the petitioner and its co-defendant Funtecha. The Court ruled that the petitioner is not liable for the injuries caused by Funtecha on the grounds that the latter was not an authorized driver for whose acts the petitioner shall be directly and primarily answerable, and that Funtecha was merely a working scholar who, under Section 14, Rule X, Book III of the Rules and Regulations Implementing the Labor Code is not considered an employee of the petitioner.

The private respondents assert that the circumstances obtaining in the present case call for the application of Article 2180 of the Civil Code since Funtecha is no doubt an employee of the petitioner. The private respondent maintain that under Article 2180 an injured party shall have recourse against the servant as well as the petitioner for whom, at the time of the incident, the servant was performing an act in furtherance of the interest and for the benefit of the petitioner. Funtecha allegedly did not steal the school jeep nor use it for a joy ride without the knowledge of the school authorities.

After a re-examination of the laws relevant to the facts found by the trial court and the appellate court, the Court reconsiders its decision. We reinstate the Court of Appeals' decision penned by the late Justice Desiderio Jurado and concurred in by Justices Jose C. Campos, Jr. and Serafin E. Camilon. Applying Civil Code provisions, the appellate court affirmed the trial court decision which ordered the payment of the P20,000.00 liability in the Zenith Insurance Corporation policy, P10,000.00 moral damages, P4,000.00 litigation and actual expenses, and P3,000.00 attorney's fees.

It is undisputed that Funtecha was a working student, being a part-time janitor and a scholar of petitioner Filamer. He was, in relation to the school, an employee even if he was assigned to clean the school premises for only two (2) hours in the morning of each school day.

Having a student driver's license, Funtecha requested the driver, Allan Masa, and was allowed, to take over the vehicle while the latter was on his way home one late afternoon. It is significant to note that the place where Allan lives is also the house of his father, the school president, Agustin Masa. Moreover, it is also the house where Funtecha was allowed free board while he was a student of Filamer Christian Institute.

Allan Masa turned over the vehicle to Funtecha only after driving down a road, negotiating a sharp dangerous

curb, and viewing that the road was clear. (TSN, April 4, 1983, pp. 78-79) According to Allan's testimony, a fast moving truck with glaring lights nearly hit them so that they had to swerve to the right to avoid a collision. Upon swerving, they heard a sound as if something had bumped against the vehicle, but they did not stop to check. Actually, the Pinoy jeep swerved towards the pedestrian, Potenciano Kapunan who was walking in his lane in the direction against vehicular traffic, and hit him. Allan affirmed that Funtecha followed his advise to swerve to the right. (Ibid., p. 79) At the time of the incident (6:30 P.M.) in Roxas City, the jeep had only one functioning headlight.

Allan testified that he was the driver and at the same time a security guard of the petitioner-school. He further said that there was no specific time for him to be off-duty and that after driving the students home at 5:00 in the afternoon, he still had to go back to school and then drive home using the same vehicle.

Driving the vehicle to and from the house of the school president where both Allan and Funtecha reside is an act in furtherance of the interest of the petitioner-school. Allan's job demands that he drive home the school jeep so he can use it to fetch students in the morning of the next school day.

It is indubitable under the circumstances that the school president had knowledge that the jeep was routinely driven home for the said purpose. Moreover, it is not improbable that the school president also had knowledge of Funtecha's possession of a student driver's license and his desire to undergo driving lessons during the time that he was not in his classrooms.

In learning how to drive while taking the vehicle home in the direction of Allan's house, Funtecha definitely was not having a joy ride. Funtecha was not driving for the purpose of his enjoyment or for a "frolic of his own" but ultimately, for the service for which the jeep was intended by the petitioner school. (See *L. Battistoni v. Thomas*, Can SC 144, 1 D.L.R. 577, 80 ALR 722 [1932]; See also *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co., Inc.* 124 SCRA 618 [1983]). Therefore, the Court is constrained to conclude that the act of Funtecha in taking over the steering wheel was one done for and in behalf of his employer for which act the petitioner-school cannot deny any responsibility by arguing that it was done beyond the scope of his janitorial duties. The clause "within the scope of their assigned tasks" for purposes of raising the presumption of liability of an employer, includes any act done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage. (*Manuel Casada*, 190 Va 906, 59 SE 2d 47 [1950]) Even if somehow, the employee driving the vehicle derived some benefit from the act, the existence of a presumptive liability of the employer is determined by answering the question of whether or not the servant was at the time of the accident performing any act in furtherance of his master's business. (*Kohlman v. Hyland*, 210 NW 643, 50 ALR 1437 [1926]; *Jameson v. Gavett*, 71 P 2d 937 [1937])

Section 14, Rule X, Book III of the Rules implementing the Labor Code, on which the petitioner anchors its defense, was promulgated by the Secretary of Labor and Employment only for the purpose of administering and enforcing the provisions of the Labor Code on conditions of employment. Particularly, Rule X of Book III provides guidelines on the manner by which the powers of the Labor Secretary shall be exercised; on what records should be kept, maintained and preserved; on payroll; and on the exclusion of working scholars from, and inclusion of resident physicians in the employment coverage as far as compliance with the substantive labor provisions on working conditions, rest periods, and wages, is concerned.

In other words, Rule X is merely a guide to the enforcement of the substantive law on labor. The Court, thus, makes the distinction and so holds that Section 14, Rule X, Book III of the Rules is not the decisive law in a civil suit for damages instituted by an injured person during a vehicular accident against a working student of a school and against the school itself.

The present case does not deal with a labor dispute on conditions of employment between an alleged employee and an alleged employer. It invokes a claim brought by one for damages for injury caused by the patently negligent acts of a person, against both doer-employee and his employer. Hence, the reliance on the implementing rule on labor to disregard the primary liability of an employer under Article 2180 of the Civil Code is misplaced. An implementing rule on labor cannot be used by an employer as a shield to avoid liability under the substantive provisions of the Civil Code.

There is evidence to show that there exists in the present case an extra-contractual obligation arising from the negligence or reckless imprudence of a person "whose acts or omissions are imputable, by a legal fiction, to other(s) who are in a position to exercise an absolute or limited control over (him)." (*Bahia v. Litonjua and Leynes*, 30 Phil. 624 [1915])

Funtecha is an employee of petitioner Filamer. He need not have an official appointment for a driver's position in order that the petitioner may be held responsible for his grossly negligent act, it being sufficient that the act of driving at the time of the incident was for the benefit of the petitioner. Hence, the fact that Funtecha was not the school driver or was not acting within the scope of his janitorial duties does not relieve the petitioner of the burden of rebutting the presumption *juris tantum* that there was negligence on its part either in the selection of a servant or employee, or in the supervision over him. The petitioner has failed to show proof of its having exercised the required diligence of a good father of a family over its employees Funtecha and Allan.

The Court reiterates that supervision includes the formulation of suitable rules and regulation for the guidance of its employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his employees. (*Bahia v. Litonjud and Leynes*, *supra*, at p. 628; *Phoenix Construction, Inc. v. Intermediate Appellate Court*, 148 SCRA 353 [1987])

An employer is expected to impose upon its employees the necessary discipline called for in the performance of any act indispensable to the business and beneficial to their employer.

In the present case, the petitioner has not shown that it has set forth such rules and guidelines as would prohibit any one of its employees from taking control over its vehicles if one is not the official driver or prohibiting the driver and son of the Filamer president from authorizing another employee to drive the school vehicle. Furthermore, the petitioner has failed to prove that it had imposed sanctions or warned its employees against the use of its vehicles by persons other than the driver.

The petitioner, thus, has an obligation to pay damages for injury arising from the unskilled manner by which Funtecha drove the vehicle. (*Cangco v. Manila Railroad Co.*, 38 Phil. 768, 772 [1918]) In the absence of evidence that the petitioner had exercised the diligence of a good father of a family in the supervision of its employees, the law imposes upon it the vicarious liability for acts or omissions of its employees. (*Umali v. Bacani*, 69 SCRA 263 [1976]; *Poblete v. Fabros*, 93 SCRA 200 [1979]; *Kapalaran Bus Liner v. Coronado*, 176 SCRA 792 [1989]; *Franco v. Intermediate Appellate Court*, 178 SCRA 331 [1989]; *Pantranco North Express, Inc. v. Baesa*, 179, SCRA 384 [1989]) The liability of the employer is, under Article 2180, primary and solidary. However, the employer shall have recourse against the negligent employee for whatever damages are paid to the heirs of the plaintiff.

It is an admitted fact that the actual driver of the school jeep, Allan Masa, was not made a party defendant in the civil case for damages. This is quite understandable considering that as far as the injured pedestrian, plaintiff Potenciano Kapunan, was concerned, it was Funtecha who was the one driving the vehicle and presumably was one authorized by the school to drive. The plaintiff and his heirs should not now be left to suffer without simultaneous recourse against the petitioner for the consequent injury caused by a janitor doing a driving chore

for the petitioner even for a short while. For the purpose of recovering damages under the prevailing circumstances, it is enough that the plaintiff and the private respondent heirs were able to establish the existence of employer-employee relationship between Funtecha and petitioner Filamer and the fact that Funtecha was engaged in an act not for an independent purpose of his own but in furtherance of the business of his employer. A position of responsibility on the part of the petitioner has thus been satisfactorily demonstrated.

WHEREFORE, the motion for reconsideration of the decision dated October 16, 1990 is hereby GRANTED. The decision of the respondent appellate court affirming the trial court decision is REINSTATED.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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