

RUFO MAURICIO CONSTRUCTION AND/OR RUFO MAURICIO, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 75357. November 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

Illustre Cabiliza was charged before the Regional Trial Court of the 5th Judicial Region, Branch II, Legaspi City with homicide and damage to property through reckless imprudence, in an information which reads -

"That on or about the 20th day of September, 1979, in the city of Legaspi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the driver of an Izusu dump truck, bearing Plate No. WD-224 T Philippines '79, belonging to and owned by RUFO MAURICIO CONSTRUCTIONS, did then and there willfully, unlawfully and feloniously drive, operate and manage the said vehicle in a reckless and imprudent manner without taking the necessary precaution to prevent and/or avoid accident to persons and/or damage to property, and without regard to traffic rules and regulations, causing as a result of his carelessness and imprudence the said vehicle that he was driving to sideswipe and hit a Colt Gallant with Plate No. AC-206 S Pilipinas '79, driven and owned by the late JUDGE ARSENIO SOLIDUM, thereby inflicting injuries upon the said Judge Arsenio Solidum which directly caused his untimely death, and further causing damage to the said Colt Gallant in the amount of Thirty Thousand (P30,000.00) PESOS, Philippine Currency, to the damage and prejudice of the late Judge Arsenio Solidum and/or his family, and likewise causing damage to the house owned by PABLO NAVARRA, to the damage and prejudice of the said Pablo Navarra.

"CONTRARY TO LAW." (Rollo, pp. 74-75)

After arraignment and trial on the merits, Cabiliza was convicted of the crime charged in a Decision dated October 12, 1983, the dispositive portion of which reads -

"WHEREFORE, this Court finds accused Illustre Cabiliza guilty beyond reasonable doubt of the crime of homicide and damage to property thru reckless imprudence and hereby sentences him to suffer the indeterminate penalty of two (2) years and four (4) months, as minimum to six (6) years, as maximum of prison correccional; to indemnify the heirs of the deceased Judge Arsenio G. Solidum, the sum of P115,723.05, as actual and compensatory damages; P1,447,200.00 for the loss of earning capacity of the deceased; P200,000.00 as moral damages; and P20,000.00 as exemplary damages, and to pay the costs." (Rollo, p. 75)

The aforesaid judgment was promulgated on November 9, 1983. On November 11, 1983, Cabiliza filed a Notice of Appeal. But he did not live to pursue his appeal as he died on January 5, 1984. A notice of death dated February 4, 1984 was filed by his counsel Atty. Eustaquio S. Beltran. In the same notice of death, Atty. Beltran manifested the intention of Rufo Mauricio, as employer of Cabiliza to proceed with the case on appeal pursuant to his right as employer who is subsidiarily liable.

On March 5, 1984, the lower court issued an Order requiring the heirs of Cabiliza to appear and to substitute him as appellant with respect to the civil aspect of the case.

On motion of the heirs of the victim, the lower court in its order dated August 23, 1984 ordered the issuance of a writ of execution and accordingly on the same date, the Branch Clerk of Court issued a writ.

The writ of execution was however returned unsatisfied per Sheriff's return of service dated September 3, 1984, because Cabiliza was found insolvent. A certificate of insolvency was issued by the Register of Deeds of the Province of Cagayan and by the Municipal Assessor of Claveria, Cagayan where Cabiliza appears to be a permanent resident.

On September 3, 1984, the victim's widow, Mrs. Aurora Solidum, filed a motion for the issuance of a subsidiary writ of execution to be enforced against the employer of Cabiliza, Rufo Mauricio and/or Rufo Mauricio Construction Co., which was granted by the court in its order dated September 6, 1984. A subsidiary writ of execution was issued by the Clerk of Court also on September 6, 1984.

On September 12, 1984, Rufo Mauricio thru his counsel Atty. Beltran filed a motion to quash the subsidiary writ of execution. Resolution of this motion was held in abeyance.

Meanwhile, Rufo Mauricio, as the employer of Cabiliza pursued the latter's appeal before the Intermediate Appellate Court (AC-G.R. No. 01829). He interposed the following assignment of errors -

I

THE LOWER COURT ERRED IN CONCLUDING THAT THE ACCUSED WAS GROSSLY NEGLIGENT AND IMPRUDENT IN TRYING TO OVERTAKE ANOTHER TRUCK WHEN THERE WAS AN ONCOMING CAR FROM THE OPPOSITE DIRECTION;

II

THE LOWER COURT ERRED IN NOT CONCLUDING THAT THE PROXIMATE CAUSE OF THE COLLISION RESULTING IN DEATH OF JUDGE ARSENIO SOLIDUM AND DAMAGE TO HIS CAR, WAS DUE TO THE LATTER'S GROSS NEGLIGENCE AND IMPRUDENCE IN INVADING THE PROPER LANE OF THE ISUZU DUMP TRUCK OWNED BY RUFO MAURICIO CONSTRUCTION;

III

THE LOWER COURT ERRED IN AWARDING THE TOTAL OF P1,782,923.05 DAMAGES IN FAVOR OF THE COMPLAINANTS;

IV

THE LOWER COURT ERRED IN NOT DISMISSING THE INFORMATION AGAINST THE ACCUSED UPON PROOF OF HIS DEATH AND IN NOT RELEASING THE EMPLOYER RUFO MAURICIO CONSTRUCTIONS AND/OR RUFO MAURICIO FROM LIABILITY;

V

THE LOWER COURT ERRED IN NOT GIVING APPELLANT RUFO MAURICIO AND/OR RUFO MAURICIO CONSTRUCTION A DAY IN COURT TO RESIST THE DAMAGES BEING CLAIMED BY THE HEIRS OF THE VICTIM.

On April 8, 1986, the Intermediate Appellate Court promulgated its now assailed Decision,[1] the pertinent

portion of which reads -

"We find that the proper amount of damages for loss of earnings based on life expectancy of the deceased is P1,082,223.84. In this respect, the trial court's finding is modified. The Judgment appealed from is affirmed in all other aspects.

"WHEREFORE, with the afore-mentioned modifications, the appealed Judgment is AF-FIRMED." (Rollo, p. 86)

Rufo Mauricio filed a motion for reconsideration which was denied for lack of merit in the Resolution of the Intermediate Appellate Court dated July 18, 1986.

The said Decision and Resolution are the subject of the present petition. Petitioner contends that -

"1. The dismissal of the criminal case against the accused employee wipes out not only the employee's primary civil liability, but also his employer's subsidiary liability for such criminal negligence, because:

'a. The criminal case is based on Article 100 of the revised Penal Code wherein criminal liability and the exemption of criminal liability implies exemption from civil liability arising from crime.

'b. The civil liability of the employer petitioner is based, if any, on quasi delict, since the accused was exempted from criminal liability.

"2. Exemplary damages cannot be imposed upon an employer who at the time of the alleged incident was not present nor inside the vehicle involved in the accident.

"3. The petitioner employer cannot be condemned (to pay) an exorbitant amount of damages to the tune of P1,417,946.89, without giving him opportunity to cross examine the witness supporting such claim and affording him opportunity to adduce evidence to resist the claim, because that would be deprivation of property without due process of law repugnant to the Freedom Constitution.

"4. The Honorable Intermediate Appellate Court misapplied the facts contrary to the physical evidence and relied on conjectures and surmises that depicted a different picture of the accident when the evidence shows that it was the victim who was negligent at the time of the accident." (Rollo, pp. 18-19)

The first contention of petitioner that the death of the accused-employee wipes out not only the employee's primary civil liability but also his employer's subsidiary liability is without merit. The death of the accused during the pendency of his appeal or before the judgment of conviction (rendered against him by the lower court) became final and executory extinguished his criminal liability (meaning his obligation to serve the imprisonment imposed and his pecuniary liability for fines, but not his civil liability should the liability or obligation arise (not from a crime, for here, no crime was committed, the accused not having been convicted by final judgment, and therefore still regarded as innocent) but from a quasi-delict (See Arts. 2176 and 2177, Civil Code), as in this case. The liability of the employer here would not be subsidiary but solidary with his driver (unless said employer can prove there was no negligence on his part at all, that is, if he can prove due diligence in the selection and supervision of his driver). (See 8th par. of Art. 2180, Art. 2194, Civil Code; also *People vs. Navoa*, 132 SCRA 412; *People vs. Tirol*, 102 SCRA 558; *People vs. Sandaydiego*, 82 SCRA 120).

Inasmuch as the employer (petitioner herein) was not a party in the criminal case, and to grant him his day in court for the purpose of cross-examining the prosecution witnesses on their testimonies on the driver's alleged negligence and the amount of damages to which the heirs of the victim are entitled, as well as to introduce any evidence or witnesses he may care to present in his defense, the hearing on the motion to quash the subsidiary writ of execution must be re-opened precisely for the purpose adverted to hereinabove.

PREMISES CONSIDERED, the assailed decision of the appellate court is hereby SET ASIDE, and this case is REMANDED to the trial court for the hearing adverted to in the next preceding paragraph.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Justice Esteban M. Lising concurred in by Justices Rodolfo A. Nocon and Federico B. Alfonso, Jr.

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