

VICENTE VERGARA, PETITIONER, VS. THE COURT OF APPEALS AND AMADEO AZARCON, RESPONDENTS.

G.R. No. 77679. September 30, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

An action for damages based on quasi-delict (Art. 2176 of the Civil Code) was filed by private respondent against petitioner. The action arose from a vehicular accident that occurred on 5 August 1979 in Gapan, Nueva Ecija, when Martin Belmonte, while driving a cargo truck belonging to petitioner, rammed "head-on" the store-residence of the private respondent, causing damages thereto which were inventoried and assessed at P53,024.22.

In his answer to the complaint, the petitioner alleged principally: "that his driver Martin Belmonte operated said cargo truck in a very diligent (and) careful manner; that the steering wheel refused to respond to his effort and as a result of a blown-out tire and despite application of his brakes, the said cargo truck hit the store-residence of plaintiff (private respondent) and that the said accident was an act of God for which he cannot be held liable"[1].

Petitioner also filed a third party complaint against Travellers Insurance and Surety Corporation, alleging that said cargo truck involved in the vehicular accident, belonging to the petitioner, was insured by the third party defendant insurance company. Petitioner asked that the latter be ordered to pay him whatever amount he may be ordered by the court to pay to the private respondent.

The trial court rendered judgment in favor of private respondent. Upon appeal to the Court of Appeals, the latter court affirmed in toto the decision of the trial court, which ordered petitioner to pay, jointly and severally with Travellers Insurance and Surety Corporation, to the private respondent the following: (a) P53,024.22 as actual damages; (b) P10,000.00 as moral damages; (c) P10,000.00 as exemplary damages; and (d) the sum of P5,000.00 for attorney's fees and the costs. On the third party complaint, the insurance company was sentenced to pay to the petitioner the following: (a) P50,000.00 for third party liability under its comprehensive accident insurance policy; and (b) P3,000.00 for and as attorney's fees.

Hence, this petition for review on certiorari.

Petitioner's contention that the respondent court erred in finding him guilty of fault or negligence is not tenable. It was established by competent evidence that the requisites of a quasi-delict are present in the case at bar. These requisites are: (1) damages to the plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose acts he must respond, was guilty; and (3) the connection of cause and effect between such negligence and the damages.

It is undisputed that private respondent suffered damages as a result of an act or omission of petitioner. The issue of whether or not this act or omission can be considered as a "negligent" act or omission was passed upon by the trial court. The findings of said court, affirmed by the respondent court, which we are not prepared to now disturb, show that the fact of occurrence of the "vehicular accident" was sufficiently established by the police report and

the testimony of Patrolman Masiclat. And the fact of negligence may be deduced from the surrounding circumstances thereof. According to the police report, "the cargo truck was travelling on the right side of the road going to Manila and then it crossed to the center line and went to the left side of the highway; it then bumped a tricycle; and then another tricycle; and then said cargo truck rammed the store-warehouse of the plaintiff"[2],

According to the driver of the cargo truck, he applied the brakes but the latter did not work due to mechanical defect. Contrary to the claim of the petitioner, a mishap caused by defective brakes can not be considered as fortuitous in character. Certainly, the defeats were curable and the accident preventable.

Furthermore, the petitioner failed to adduce any evidence to overcome the disputable presumption of negligence on his part in the selection and supervision of his driver.

Based on the foregoing finding by the respondent Court that there was negligence on the part of the petitioner, the petitioner's contention that the respondent court erred in awarding private respondent actual, moral and exemplary damages as well as attorney's fees and costs, is untenable.

ACCORDINGLY, the petition is DENIED.

SO ORDERED.

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

[1] Rollo, p. 26

[2] Rollo, p. 30

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