

HEIRS OF THE LATE DOCTOR CORAZON DIAZ-LEUS, NAMELY, HER HUSBAND, CLETO P. LEUS AND CHILDREN, CESAR LEUS, DRA. CORAZON D. LEUS, JR., AND CLARISSA LEUS, PETITIONERS, VS. HERNANI M...

G.R. No. 77716. February 17, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Almario Rosas and Hernani Melvida were charged of the crime of Reckless Imprudence resulting in Double Homicide, Serious and Slight Physical Injuries and Damage to Property allegedly committed in the following manner:

"That on or about the 30th day of June, 1972, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Hernani Melvida and Almario C. Rosas, being then the chauffeurs and the persons in charge of Plymouth Car bearing plate No. 99-OW-Caloocan City 1971 and a Victory Liner bus with body number 512 and bearing plate No. 27-55 PUB Caloocan City 1972, respectively, did then and there wilfully, unlawfully and feloniously drive and operate their respective motor vehicles along the North Expressway (Marcelo H. del Pilar Highway) towards opposite directions in the said municipality, in a negligent, careless and imprudent manner, without due regard to traffic laws, rules and regulations and the weather conditions, and without taking the necessary precautions to avoid injuries to persons and damage to property, causing by such negligence, carelessness and imprudence the said Plymouth car bearing plate No. 99-OWL-Caloocan City 1971 driven by the said accused Hernani Melvida to swerve to its left, cross the island, and move onto the lane for the opposite traffic, and the said Victory Liner bus with body number 512 and bearing plate No. 27-55 PUB Caloocan City 1972 to hit and bump the said Plymouth car, thereby inflicting on Dra. Corazon Diaz-Leus, Florencio Carvilledo Y Canhagas and Mrs. Leonisa Gali, passengers of the said Plymouth car, serious physical injuries, which directly caused the death of the said Dra. Corazon Diaz-Leus and Florencio Carbilledo Y Canhagas, to the damage prejudice of the legal heirs of the said deceased Dra. Corazon Diaz-Leus and Florencio Carbilledo Y Canhagas, and incapacitated the said Mrs. Leonisa Gali from performing her customary labor and required her medical attendance for a period of more than 30 days and also inflicting slight physical injuries on Leonisa Payumo, passenger of the said Victory Liner bus, which required medical attendance and incapacitated her from performing her customary labor for a period of not more than 9 days, and further causing damages to the said Plymouth car and the said Victory Liner Bus, to the damage and prejudice of their owners, Jesus Gali and the Victory Liner Bus Lines Inc., respectively. Contrary to law."[1]

Upon arraignment Rosas and Melvida entered a plea of not guilty and after trial a decision was rendered by the trial court, the dispositive portion of which reads -

"FOR ALL THE FOREGOING, the Court finds the accused Hernani Melvida guilty beyond reasonable doubt of the offense charged and he is hereby sentenced to suffer imprisonment of an indeterminate penalty of from SIX (6) MONTHS OF *arresto mayor*; as minimum, to TWO (2) YEARS and FOUR (4) MONTHS of prison

correccional, as maximum, with the accessory penalties prescribed by law; to indemnity (sic) the legal heirs of the deceased Dra. Corazon Diaz-Leus and Florencio Carbilledo the sum of P12,000.00 each; to pay the legal heirs of Dra. Leus the amount of P14,000.00 as funeral and death expenses; to pay the said legal heirs of the amount of P200,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

For failure to establish the guilt of accused Almario Rosas beyond reasonable doubt, he is hereby Acquitted of the offense charged. With costs."[2]

From said decision Cleto Leus and his children as legal heirs appealed to the Court of Appeals only with respect to the civil aspect. The vital issue raised to the Court of Appeals is whether or not accused-appellee Almario Rosas could still be held civilly liable despite his acquittal in the criminal case.[3] They also contend that the Victory Liner and Jesus Gali, owners of the colliding vehicles, are subsidiarily liable for damages.

The Court of Appeals made the following finding of facts -

"The facts adduced from the evidence presented by the prosecution shows that in the afternoon of June 30, 1972, a vehicular accident happened along the North Expressway. A Plymouth car bearing plate No. 99-OWL-Caloocan City figured in the accident. The car was driven by accused Hernani Melvida and the passengers were the victims Mrs. Leonisa Gali and the deceased Dra. Corazon Diaz-Leus, wife of complainant Atty. Cleto Leus and Florencio Carbilledo. The Plymouth car driven by accused came from a Quezon City hospital and was on its way home to Bulacan taking the North Expressway. Accused Melvida drove the car at a fast speed and in a negligent manner causing it to swerve to the left, traversing the grassy island which separates the North and the South lanes of the Expressway until it reached a portion of the left lane more or less two (2) feet from the asphalted portion of the south lane on the left side facing South going to Manila as shown in Exhibit 'C', 'C-2' and 'C-3' when it was bumped on the rear portion by a Victory Liner bus and dragged about 50 meters off the cemented road to the grassy island where it was crashed-landed on by the front portion of said Victory Liner bus. Said bus bearing plate No. 27-55 PUB-Caloocan City 1972 was driven by accused Almario Rosas, travelling South towards Manila in an imprudent and negligent manner without due regard to traffic rules and regulations and to the weather condition which was then stormy.

It also appears that before the accident, the bus driven by accused overtook the car of Dr. Romeo San Diego which was running at the speed of 80 kilometers per hour. The said bus when it overtook the car of Dr. San Diego was running at a fast speed thus creating a 'whizzing sound'. As a result of the vehicular accident, Dra. Corazon Diaz-Leus was pinned to death inside the car together with another passenger Florencio Carbilledo."

Thereafter, it was held -

"Upon review of the whole records WE find as the lower court did that the accident in question cannot be attributed to any negligence of appellee Rosas. The stubborn and undisputed facts reveal that appellee Rosas was driving his bus on his own lane of the highway going south when the Plymouth car suddenly encroached on his (Rosas) lane in front of its path after crossing the wide grassy strip of land separating the North and the South lane of the expressway. Appellee Rosas who was properly traversing his own lane should not be expected to anticipate and/or foresee that a private car coming from the North lane would be thrown to his path. Even, assuming as alleged that appellee Rosas was driving at a very fast speed, had the Plymouth car remained on its proper lane, collision would not have occurred. The proximate cause of the accident is the Plymouth car's leaving its proper (north) lane, swerving to its left and intruding into the south-bound lane. The collision which resulted in the destruction of the Plymouth car had not been due to any negligence on appellee Rosas part. It was a fortuitous event which appellee Rosas could not prevent. And, since appellants appeal on the civil aspect is predicated upon appellee Rosas negligence which does not exist, it follows that his acquittal in the criminal case carries with it the extinction of his civil liability and therefore the offended parties, herein appellants may no longer appeal and recover damages from said appellee Rosas. As a consequence, the rule that – 'Extinction

of the penal action does not carry with it extinction of the civil,' xxx; (Sec. 3, (c), Rule III, Rules of Court) does not apply to the present instance. The case falls squarely under the exception that 'unless the extinction proceeds from a declaration in a (sic) initial judgment that the fact from which the civil might arise did not exist. xxx.' (Sec. 3, (c), Rules of Court). It has been held that where the judgment of acquittal in criminal prosecution for arson through reckless imprudence states that the offense was caused by fortuitous event, the civil action to recover damages is barred. (Cf. Tan vs. Standard Vacuum Oil, Co., 48 O.G. 2745). The decision appealed from which is final and executory as regards its criminal phase, has not only acquitted accused, but also declared that the collision, which resulted in the destruction of appellants' car, had not been due to any negligence on his part. Since appellants' civil action is predicated upon accused alleged negligence, which does not exist, according to said final judgment, it follows necessarily that his acquittal in the criminal action carries with it the extinction of the civil responsibility arising therefrom. (Faraon vs. Priela, G.R. L-23129, August 2, 1968, 24 SCRA 582).

Appellants also alleged that the lower court committed error in not considering the loss of earning capacity of the deceased Dra. Leus. According to appellants, the deceased as a doctor had an average earning of P600.00 covering the year 1971 and for six (6) months from January to June 1972 and an average earnings in business for the years 1971 and 1972, the sum of P1,010.

The deceased Dra. Leus was 59 years of age when she died. At such age the normal life expectancy is 14 years, according to the formula $(2/3 \times [80-30])$ adopted by the Supreme Court in the case of Villa Rey Transit, Inc. vs. Court of Appeals, 31 SCRA 511 on the basis of the American Expectancy Table of Mortality or the Actualial (sic) Combined Experience Table of Morality. In the computation of the amount recoverable by the heirs of the victim of tort, the loss of the entire earnings is not considered. It is only the net earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. In the case at bar, the earnings after computing was P904.96 a year and deduction of P200.00 a month as necessary expenses to the creation of such income is reasonable. The amount of P704.96 net yearly income multiplied by 14 years, or P9,869.44 is the amount which should be awarded to appellants. (Davila vs. Phil. Air Lines, 49 SCRA 497; People vs. Henson, CA-G.R. No. 12521-CR, May 25, 1973). Then, to, WE believe that the award of damages for the death of Dra. Leus in the amount of P200,000.00 without interest is reasonable and WE find no justification to modify.

In view thereof, appellee Melvida is hereby ordered to pay complainants-appellants additional sum of P9,869.44.

WHEREFORE, with the modification as to the award of damages, the decision appealed from is hereby AFFIRMED in all other respects."[4]

Petitioner now comes before this Court raising the legal issue whether or not the trial court should be ordered to determine the civil liability of Rosas and subsidiary civil liability of the owners of the car and the bus to the heirs of Dra. Diaz Leus in accordance with Article 29 of the Civil Code which provides -

"Art. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, may be inferred from the text of the decision whether or not the acquittal is due to that ground."

Petitioner also invokes the ruling of this Court in Paman vs. Seneris,[5] where it was held -

"Moreover, it has been invariably held that a judgment of conviction sentencing a defendant employer to pay

an indemnity in the absence of any collusion between the defendant and the offended party, is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability not only with regard to the civil liability, but also with regard to its amount.

'This being the case, this Court stated in *Rotea vs. Halili*, 109 Phil. 495 that the court has no other function than to render decision based upon the indemnity awarded in the criminal case and has no power to amend or modify it even if in its opinion an error has been committed in the decision. A separate and independent action is, therefore, unnecessary and would only unduly prolong the agony of the victim.' (115 SCRA, p. 715)."

The findings of the Court of Appeals were a complete exoneration of Rosas. Since petitioner's appeal on the civil aspect is predicated upon Rosas' alleged negligence which has been found not to exist, this Court must likewise uphold the Court of Appeals' ruling that Rosas' acquittal in the criminal case carries with it the extinction of his civil liability which bars herein petitioners from recovering damages from Roxas. Since Rosas is absolved from any act of negligence which in effect prevents further recovery of any damages, the same is likewise true with respect to his employer Victory Liner, Inc. which at most would have been only subsidiarily liable.

Nor can the spouses Jesus Gali and Leonisa Gali as employers of respondent Hernani Melvida be subsidiarily liable. Art. 103 of the Revised Penal Code provides:

"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 their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

In order that employers may be held liable under the above-quoted provision of law, the following requisites must exist:

- (1) That an employee has committed a crime in the discharge of his duties;
- (2) that said employee is insolvent and has not satisfied his civil liability; and
- (3) that the employer is engaged in some kind of industry.[6]

The preceding requisites are not present in the case of the Gali spouses. They are not engaged in any kind of industry. Industry has been defined as any department or branch of art, occupation or business, especially, one which employs much labor and capital and is a distinct branch of trade, as the sugar industry.[7]

Thus, the Gali spouses cannot be held subsidiarily liable. As We stated in a previous case: "Where the defendant is admittedly a private person who has no business or industry, and uses his automobile for private purposes, he is not also subsidiarily liable to the plaintiff for the damages to the latter's car caused by the reckless imprudence of his insolvent driver." [8]

WHEREFORE, the petition is DENIED. No costs.

SO ORDERED.

Teehankee, C.J., Narvasa, and Cruz, JJ., concur.

Griño-Aquino, J., no part, did not participate in deliberation.

[1] Information, pp. 6-8, original record.

[2] Decision, p. 494, original record.

[3] Decision of Court of Appeals, p. 7.

[4] Decision of Court of Appeals, pp. 8-9.

[5] 116 Phil. 709.

[6] Joaquin vs. Aniceto, 12 SCRA 308.

[7] Sangco, Philippine Law on Torts & Damages, p. 340.

[8] Steinmetz vs. Valdez, 72 Phil. 92. (As translated from Spanish text).

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