

**ERNESTO MARTIN, PETITIONER, VS. HON. COURT OF APPEALS AND
MANILA ELECTRIC COMPANY, RESPONDENTS.***G.R. No. 82248. January 30, 1992*

Ponente: CRUZ, J.

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This case turns on the proper application of the familiar rule that he who alleges must prove his allegation.

Ernesto Martin was the owner of a private car bearing license plate No. NPA-930. At around 2 o'clock in the morning of May 11, 1982, while being driven by Nestor Martin, it crashed into a Meralco electric post on Valley Gold Road, in Antipolo, Rizal. The car was wrecked and the pole severely damaged. Meralco subsequently demanded reparation from Ernesto Martin, but the demand was rejected. It thereupon sued him for damages in the Regional Trial Court of Pasig, alleging inter alia that he was a liable to it in the sum of P17, 352.00 plus attorney's fees and litigation costs as the employer of Nestor Martin. The petitioner's main defense was that Nestor Martin was not his employee.

After the plaintiff had rested, the defendant moved to dismiss the complaint on the ground that no evidence had been adduced show that Nestor Martin was his employee. The motion was denied. The case was considered submitted for decision with the express waiver by the defendant of his right to present his own evidence. The defendant thus did not rebut the plaintiff's allegation that he was Nestor Martin's employer.

In the decision dated August 27, 1985, Judge Eutropio Migriño held in favor of the plaintiff, awarding him the amount claimed, with 12% interest, and P4,000.00 attorney's fees, plus costs.[1] The decision was seasonably elevated to the Court of Appeals, which affirmed it in toto on February 22, 1988, [2] prompting this petition for review.

The petition has merit.

It is important to stress that the complaint for damages was filed by the private respondent against only Ernesto Martin as alleged employer of Nestor Martin, the driver of the car at the time of the accident. Nestor Martin was not impleaded. The action was based on tort under Article 2180 of the Civil Code, providing in part that:

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The above rule is applicable only if there is an employer-employee relationship although it is not necessary that the employer be engaged in any business or industry. It differs in this sense from Article 103 of the Revised Penal Code, which requires that the employer be engaged in an industry to be subsidiarily liable for the felony committed by his employee in the course of his employment.

Whether or not engaged in any business or industry, the employer under Article 2180 is liable for the torts committed by his employees within the scope of their assigned task. But it is necessary first to establish the

employment relationship. Once this is done, the plaintiff must show, to hold the employer liable, that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of the employee as allowed in that article.[3]

In the case at bar, no evidence whatsoever was adduced by the plaintiff to show that the defendant was the employer of Nestor Martin at the time of the accident. The trial court merely presumed the existence of the employer-employee relationship and held that the petitioner had not refuted that presumption. It noted that although the defendant alleged that he was not Nestor Martin's employer, "he did not present any proof to substantiate his allegation."

As the trial court put it:

There is no need to stretch one's imagination to realize that a car owner entrusts his vehicle only to his driver or to anyone whom he allows to drive it. Since neither plaintiff nor defendant has presented any evidence on the status of Nestor Martin, the Court presumes that he was at the time of the incident, an employee of the defendant. It is elementary that he who makes an allegation is required to prove the same. Defendant alleges that Nestor Martin was not his employee but he did not present any proof to substantiate his allegation. While it is true plaintiff did not present evidence on its allegation that Nestor Martin was defendant's employee, the Court believes and so holds, that there was no need for such evidence. As above adverted to, the Court can proceed on the presumption that one who drives the motor vehicle is an employee of the owner thereof.

A presumption is defined as an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known,[4] or a conjecture based on past experience as to what course human affairs ordinarily take.[5] It is either a presumption juris, or of law, or a presumption hominis, or of fact.[6]

There is no law directing the deduction made by the courts below from the particular facts presented to them by the parties. Such deduction is not among the conclusive presumptions under Section 2 or the disputable presumptions under Section 3 of Rule 131 of the Rules of Court. In other words, it is not a presumption juris.

Neither is it a presumption hominis, which is a reasonable deduction from the facts proved without an express direction of law to that effect.[7] The facts proved, or not denied, viz., the ownership of the car and the circumstances of the accident, are not enough bases for the inference that the petitioner is the employer of Nestor Martin.

In the modern urban society, most male persons know how to drive and do not have to employ others to drive for them unless this is needed for business reasons. Many cannot afford this luxury, and even if they could, may consider it an unnecessary expense and inconvenience. In the present case, the more plausible assumption is that Nestor Martin is a close relative of Ernesto Martin and on the date in question borrowed the car for some private purpose. Nestor would probably not have been accommodated if he were a mere employee for employees do not usually enjoy the use of their employer's car at two o'clock in the morning.

As the employment relationship between Ernesto Martin and Nestor Martin could not be presumed, it was necessary for the plaintiff to establish it by evidence. Meralco had the burden of proof, or the duty "to present evidence on the fact in issue necessary to establish his claim" as required by Rule 131, Section 1 of the Revised Rules of Court. Failure to do this was fatal to its action.

It was enough for the defendant to deny the alleged employment relationship, without more, for he was not under obligation to prove this negative averment. *Ei incumbit probatio qui dicit, non qui negat*. [8] This Court has consistently applied the ancient rule that "if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the defendant is under no

obligation to prove his exception or defense." [9]

The case of *Amor v. Soberano*, [10] a Court of Appeals decision not elevated to this Court, was misapplied by the respondent court in support of the petitioner's position. The vehicle involved in that case was a six-by-six truck, which reasonably raised the factual presumption that it was engaged in business and that its driver was employed by the owner of the vehicle. The case at bar involves a private vehicle as its license plate indicates. No evidence was ever offered that it was being used for business purposes or that, in any case, its driver at the time of the accident was an employee of the petitioner.

It is worth mentioning in this connection that in *Filamer Christian Institute v. court of Appeals*, [11] the owner of the jeep involved in the accident was absolved from liability when it was shown that the driver of the vehicle was not employed as such by the latter but was a "working scholar" as that term is defined by the Omnibus Rules Implementing the Labor Code. [12] He was assigned to janitorial duties. Evidence was introduced to establish the employment relationship but it failed nonetheless to hold the owner responsible. Significantly, no similar evidence was even presented in the case at bar, the private respondent merely relying on its mere allegation that Nestor Martin was the petitioner's employee. Allegation is not synonymous with proof.

The above observations make it unnecessary to examine the question of the driver's alleged negligence or the lack of diligence on the part of the petitioner in the selection and supervision of his employee. These questions have not arisen because the employment relationship contemplated in Article 1860 of the Civil Code has not been established.

WHEREFORE, the petition is GRANTED. The decision of the respondent court is REVERSED, and Civil Case No. 48045 in the Regional Trial Court of Pasig, Branch 151, is DISMISSED, with costs against the respondent. It is so ordered.

Narvasa, C.J., Griño-Aquino, and Medialdea, JJ., concur.

[1] Original Records, p. 103.

[2] Penned by Herrera, O., J., with Ejercito and Torres, JJ., concurring.

[3] *Cerf v. Medel*, 33 Phil. 37.

[4] *Moran*, Comments on the Rules of Court, Vol. 6, 1980 ed., p. 12.

[5] *Perez v. Ysip*, 81 Phil. 218.

[6] *Moran*, *supra*.

[7] *Ibid*.

[8] "He who asserts, not he who denies, must prove."

[9] *Belen v. Belen*, 13 Phil. 202.

[10] 63 O.G. No. 32, 6850.

[11] 190 SCRA 485.

[12] Sec. 14, Rule X of Book III of the Omnibus Rules Implementing the Labor Code.

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