

GILBERTO M. DUAUIT, PETITIONER, VS. THE HON. COURT OF APPEALS, ACTING THROUGH THE THIRD DIVISION, AS PUBLIC RESPONDENT, AND ANTONIO SARMIENTO, SR. & VIRGILIO CATUAR, RESPONDENTS.

G.R. No. 82318. May 18, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition raises the sole issue of whether or not the owner of a private vehicle which figured in an accident can be held liable under Article 2180 of the Civil Code when the said vehicle was neither driven by an employee of the owner nor taken with the consent of the latter.

The facts are summarized in the contested decision, as follows:

"From the evidence adduced by the plaintiffs, consisting of the testimonies of witnesses Virgilio Catuar, Antonio Sarmiento, Jr., Ruperto Catuar, Jr. and Norberto Bernarte it appears that on July 28, 1971 plaintiffs Antonio Sarmiento, Sr. and Virgilio Catuar were aboard a jeep with plate number 77-99-F-1-Manila, 1971, owned by plaintiff, Ruperto Catuar was driving the said jeep on Ortigas Avenue, San Juan, Rizal; that plaintiff's jeep, at the time, was running moderately at 20 to 35 kilometers per hour - and while approaching Roosevelt Avenue, Virgilio Catuar slowed down; that suddenly, another jeep with plate number 99-97-F-J, Manila 1971 driven by defendant Oscar Sabiniano hit and bumped plaintiff's jeep on the portion near the left rear wheel, and as a result of the impact plaintiff's jeep fell on its right and skidded by about 30 yards; that as a result plaintiff's jeep was damaged, particularly the windshield, the differential, the part near the left rear wheel and the top cover of the jeep; that plaintiff Virgilio Catuar was thrown to the middle of the road; his wrist was broken and he sustained contusions on the head; that likewise plaintiff Antonio Sarmiento, Sr. was trapped inside the fallen jeep, and one of his legs was fractured.

"Evidence also shows that the plaintiff Virgilio Catuar spent a total of P2,464.00 for repairs of the jeep, as shown by the receipts of payment of labor and spare parts (Exhs. H to H-7). Plaintiffs likewise tried to prove that plaintiff Virgilio Catuar, immediately after the accident was taken to Immaculate Concepcion Hospital, and then was transferred to the National Orthopedic Hospital; that while plaintiff Catuar was not confined in the hospital, his wrist was in a plaster cast for a period of one month, and the contusions on his head were under treatment for about two (2) weeks; that for hospitalization, medicine and allied expenses, plaintiff Catuar spent P5,000.00.

"Evidence also shows that as a result of the incident, plaintiff Antonio Sarmiento, Sr. sustained injuries on his leg; that at first, he was taken to the National Orthopedic Hospital (Exh. K), but later he was confined at the Makati Medical Center from July 29, to August 29, 1971 and then from September 15 to 25, 1971; that his leg was in a plaster cast for a period of eight (8) months; and that for hospitalization and medical attendance, plaintiff Antonio Sarmiento, Sr. spent no less than P13,785.25 as evidenced by receipts in his possession (Exhs. N to N-1).

"Proofs were adduced also to show that plaintiff Antonio Sarmiento, Sr. is employed as Assistant Accountant of the Canlubang Sugar Estate with a salary of P1,200.00 a month; that as sideline, he also works as accountant of United Haulers, Inc. with a salary of P500.00 a month; and that as a result of this incident, plaintiff Sarmiento was unable to perform his normal work for a period of at least 8 months. On the other hand, evidence shows that the other plaintiff Virgilio Catuar is a Chief Clerk in Canlubang Sugar Estate with a salary of P500.00 a month, and as a result of the incident, he was incapacitated to work for a period of one (1) month.

"The plaintiffs have filed this case both against Oscar Sabiniano as driver, and against Gualberto Duavit as owner of the jeep.

"Defendant Gualberto Duavit, while admitting ownership of the other jeep (Plate No. 99-07-F-J Manila, 1971), denied that the other defendant (Oscar Sabiniano) was his employee. Duavit claimed that he has not been an employer of defendant Oscar Sabiniano at anytime up to the present.

"On the other hand documentary and testimonial evidence show that defendant Oscar Sabiniano was an employee of the Board of Liquidators from November 14, 1966 up to January 4, 1973 (Annex A of Answer).

"Defendant Sabiniano, in his testimony, categorically admitted that he took the jeep from the garage of defendant Duavit without the consent or authority of the latter (TSN, September 7, 1978, p. 8). He testified further, that Duavit even filed charges against him for theft of the jeep, but which Duavit did not push through as his (Sabiniano's) parents apologized to Duavit on his behalf.

"Defendant Oscar Sabiniano, on the other hand in an attempt to exculpate himself from liability, makes it appear that he was taking all necessary precaution while driving and the accident occurred due to the negligence of Virgilio Catuar. Sabiniano claims that it was plaintiff's vehicle which hit and bumped their jeep." (Rollo, pp. 21-23)

The trial court found Oscar Sabiniano negligent in driving the vehicle but found no employer-employee relationship between him and the petitioner because the latter was then a government employee and he took the vehicle without the authority and consent of the owner. The petitioner was, thus, absolved from liability under Article 2180 of the Civil Code.

The private respondents appealed the case.

On January 7, 1988, the Court of Appeals rendered the questioned decision holding the petitioner jointly and severally liable with Sabiniano. The appellate court in part ruled:

"We cannot go along with appellee's argument. It will be seen that in *Vargas v. Langcay*, supra, it was held that it is immaterial whether or not the driver was actually employed by the operator of record or registered owner, and it is even not necessary to prove who the actual owner of the vehicle and who the employer of the driver is. When the Supreme Court ruled, thus: 'We must hold and consider such owner-operator of record (registered owner) as the employer in contemplation of law, of the driver,' it cannot be construed other than that the registered owner is the employer of the driver in contemplation of law. It is a conclusive presumption of fact and law, and is not subject to rebuttal of proof to the contrary. Otherwise, as stated in the decision, we quote:

"The purpose of the principles evolved by the decisions in these matters will be defeated and thwarted if we entertain the argument of petitioner that she is not liable because the actual owner and employer was established by the evidence. xxx."

Along the same vein, the defendant-appellee Gualberto Duavit cannot be allowed to prove that the driver Sabiniano was not his employee at the time of the vehicular accident.

"The ruling laid down in *Amar v. Soberano* (1966), 63 O.G. 6850, by this Court to the effect that the burden of proving the non-existence of an employer-employee relationship is upon the defendant and this he must do by

a satisfactory preponderance of evidence, has to defer to the doctrines evolved by the Supreme Court in cases of damages arising from vehicular mishaps involving registered motor vehicle. (See *Tugade v. Court of Appeals*, 85 SCRA 226, 230). (Rollo, pp. 26-27)

The appellate court also denied the petitioner's motion for reconsideration. Hence, this petition.

The petitioner contends that the respondent appellate court committed grave abuse of discretion in holding him jointly and severally liable with Sabiniano in spite of the absence of an employer-employee relationship between them and despite the fact that the petitioner's jeep was taken out of his garage and was driven by Sabiniano without his consent.

As early as in 1939, we have ruled that an owner of a vehicle cannot be held liable for an accident involving the said vehicle if the same was driven without his consent or knowledge and by a person not employed by him. Thus, in *Duquillo v. Bayot* (67 Phil. 131-133-134) [1939] we said:

"Under the facts established, the defendant cannot be held liable for anything. At the time of the accident, James McGurk was driving the truck, and he was not an employee of the defendant, nor did he have anything to do with the latter's business; neither the defendant nor Father Ayson, who was in charge of her business, consented to have any of her trucks driven on the day of the accident, as it was a holy day, and much less by a chauffeur who was not in charge of driving it; the use of the defendant's truck in the circumstances indicated was done without her consent or knowledge; it may, therefore, be said, that there was not the remotest contractual relation between the deceased Pio Duquillo and the defendant. It necessarily follows from all this that articles 1101 and following of the Civil Code, cited by the appellant, have no application in this case, and, therefore, the errors attributed to the inferior court are without basis."

The Court upholds the above ruling as still relevant and better applicable to present day circumstances.

The respondent court's misplaced reliance on the cases of *Erezo v. Jepte* (102 Phil. 103 [1957] and *Vargas v. Langcay* (6 SCRA 174 [1962]) cannot be sustained. In the *Erezo* case, Jepte, the registered owner of the truck which collided with a taxicab, and which resulted in the killing of Erezo, claimed that at the time of the accident, the truck belonged to the Port Brokerage in an arrangement with the corporation but the same was not known to the Motor Vehicles Office. This Court sustained the trial court's ruling that since Jepte represented himself to be the owner of the truck and the Motor Vehicles Office, relying on his representation, registered the vehicle in his name, the Government and all persons affected by the representation had the right to rely on his declaration of ownership and registration. Thus, even if Jepte were not the owner of the truck at the time of the accident, he was still held liable for the death of Erezo. Significantly, the driver of the truck was fully authorized to drive it.

Likewise, in the *Vargas* case, just before the accident occurred, Vargas had sold her jeepney to a third person, so that at the time of the accident she was no longer the owner of the jeepney. This court, nevertheless, affirmed Vargas' liability since she failed to surrender to the Motor Vehicles Office the corresponding AC plates in violation of the Revised Motor Vehicle Law and Commonwealth Act No. 146. We further ruled that the operator of record continues to be the operator of the vehicle in contemplation of law, as regards the public and third persons, and as such is responsible for the consequences incident to its operator. The vehicle involved was a public utility jeepney for hire. In such cases, the law does not only require the surrender of the AC plates but orders the vendor operator to stop the operation of the jeepney as a form of public transportation until the matter is reported to the authorities.

As can be seen, the circumstances of the above cases are entirely different from those in the present case. Herein petitioner does not deny ownership of the vehicle involved in the mishap but completely denies having employed the driver Sabiniano or even having authorized the latter to drive his jeep. The jeep was virtually stolen from the

petitioner's garage. To hold, therefore, the petitioner liable for the accident caused by the negligence of Sabiniano who was neither his driver nor employee would be absurd as it would be like holding liable the owner of a stolen vehicle for an accident caused by the person who stole such vehicle. In this regard, we cannot ignore the many cases of vehicles forcibly taken from their owners at gunpoint or stolen from garages and parking areas and the instances of service station attendants or mechanics of auto repair shops using, without the owner's consent, vehicles entrusted to them for servicing or repair.

We cannot blindly apply absolute rules based on precedents whose facts do not jibe four square with pending cases. Every case must be determined on its own peculiar factual circumstances. Where, as in this case, the records of the petition fail to indicate the slightest indicia of an employer-employee relationship between the owner and the erring driver or any consent given by the owner for the vehicle's use, we cannot hold the owner liable.

We, therefore, find that the respondent appellate court committed reversible error in holding the petitioner jointly and severally liable with Sabiniano to the private respondent.

WHEREFORE, the petition is GRANTED and the decision and resolution appealed from are hereby ANNULLED and SET ASIDE. The decision of the then Court of First Instance (now Regional Trial Court) of Laguna, 8th Judicial District, Branch 6, dated July 30, 1981 is REINSTATED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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