

JOSE A. ORTALIZ, PLAINTIFF AND APPELLANT, VS. CONRADO ECHARRI, DEFENDANT AND APPELLEE.

G. R. No. 9331. July 31, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Plaintiff-appellant seeks the reversal of the order of the Court of First Instance of Negros Occidental dismissing the case on the ground that the complaint does not state a cause of action.

On February 19, 1953, plaintiff filed in the court below a complaint wherein, after stating¹ the legal personalities of the parties, he averred the following:

"2. That the plaintiff is the lawful father of the child, Winston Ortaliz, had in legitimate wedlock with Klena Lucasan;

"3. That on or about December 18, 1953, at the corner of Washington and Justicia Streets, Bacolod City, Philippines, the Studebaker Sedan Car with Plate No. 35-1138 of the defendant struck the plaintiff's son, Winston Ortaliz, causing upon him physical injuries as a result of which he was taken to the Occidental Negros Provincial Hospital as evidenced by the medical certificate herewith attached and marked as Annex "A" of this complaint;

"4. That the said Studebaker Sedan Car with Plate No. 35-1138 was at the time of the accident, driven and controlled by Segundino Estanda, a driver under the employ of the defendant, without due care and diligence and with negligence and recklessness and violation of traffic rules and regulations;

"5. That an information was filed in the Municipal Court of the City of Bacolod which was docketed as Criminal Case No. 2607 against the said Segundino Estanda for the crime of Slight Physical Injuries Through Reckless Imprudence, a copy of said Information is hereto attached marked as Annex "B" and made an integral part of this complaint;

"6. That the said Segundino Estanda pleaded guilty to the crime charged in the Information and he was finally sentenced to suffer the penalty of five (5) days of Arresto Menor and to pay the costs in a Decision rendered in said case, copy of which Decision is hereto attached marked as Annex "C" and made an integral part of this complaint;

"7. That the said Decision, Annex "C" has long become final and said Segundino Estanda has already served the penalty metted to him by virtue thereof;

"8. That the plaintiff has suffered damages in the form of expenses paid for the hospitalization, medicines, physicians' fees and incidental expense of his son, Winston Ortaliz, in the amount of P446.58; "

"9. That the plaintiff, by reason of the accident met by his said son, Winston Ortaliz, as above-stated, through the fault, negligence and recklessness of Segundino Estanda for whose acts the defendant is responsible because he was at the time employed by him (defendant) as his driver, has also suffered, because of the mental anguish, fright, serious anxiety, wounded feelings and moral shock, moral damages in the amount of TWO

thou? PESOS (F2,000), Philippine Currency;

"10. That the boy, Winston Ortaliz, was strong, robust and happy before the accident that caused on him physical Injuries which necessitated his hospitalization and medical attention, and was not suffering nor had he ever suffered from any illness;

"11. That demands have been made on the defendant to pay the plaintiff the sum of P2,446.55 for actual, consequential and moral damages, but the defendant refused and. still refuses to pay the same, and that by reason of the refusal of the defendant, the plaintiff was forced to secure the services of an attorney paying the latter the sum of P500.

"Wherefore, it is respectfully prayed that a decision be rendered;

- Sentencing- the defendant to pay the plaintiff the sum of F2,-146.55 for the actual, consequential and moral damages plus an additional sum of P500 for attorney's fees;
- To pay the costs of this suit, and
- Plaintiff be granted any other remedy that is just and equit- able and proper in law."

On March 18, 1953, the defendant-appellee filed a motion to dismiss wherein, after admitting the ownership of the Studebaker Sedan car with plate No. 35-1138, he alleged the following:

" (a) That the case at bar is one for recovery of damages arising from the crime of Slight Physical Injuries as borne out by the allegations of the complaint itself.

"(b) That defendant is being sued in his capacity as the employer of the perpetrator of the said crime, Segundino Estanda, and, as deducible from the allegations of the complaint, for defendant's supposed subsidiary civil liability arising therefrom under the Revised Penal Code.

"(d) That the complaint does not allege that defendant was nor is engaged in any business or industry in conjunction with which he has at any time used the said car, much less on the occasion of the alleged accident, nor that defendant bad at any time put out the said car for hire.

"(e) That the obligation or liability of defendant, if any, for the damages alleged in the complaint, being an obligation arising from a criminal offense, is governed by Article 1161 oC the Civil Code, which, in turn, makes the penal laws applicable thereto.

"(f) That, under Article 103 of the Revised Penal Code, it is essential, in order for an employer to be liable subsidiarily for felonies committed by his employee, that the former be engaged in some kind of industry, and that the employer had committed the crime in the discharge of Ms duties in connection with such industry.

"(g) That, therefore, defendant cannot "be held subsidiarily liable for the crime committed by his driver as alleged in plaintiff's complaint.

"PREMISES CONSIDERED, defendant respectfully prays this Hon. Court to dismiss the complaint, the same having failed to state a cause of action, with costs."

Thereafter the parties submitted their respective memoranda on whether the complaint failed to state a cause of action and the Court, after taking into consideration the arguments advanced by the parties, dismissed the complaint.

Plaintiff now contends that under paragraph 2 of Article 2884 of the Civil Code and paragraphs 1 and 5 of Article 2180, a sufficient cause of action has been clearly alleged in the disputed complaint and therefore the same should not have been dismissed. Article 2180 in part provides:

"Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

"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."

and Article 2184 in its last paragraph provides:

"If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable."

Having in view the aforequoted provisions of law and those of Article 2176 to the effect that "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done", there seems to be good reason to support plaintiff's contention that the complaint in question states sufficient cause of action. Defendant-appellee, however, claims that there is no allegation in the complaint that "the defendant was engaged in some kind of industry and that the employee had committed the crime in the discharge of his duties in connection with such industry," hence the defendant cannot be held subsidiarily liable for the crime committed by his driver and therefore the complaint failed to state facts sufficient to constitute a cause of action. But paragraph 5 of Article 2180 refutes this contention for it clearly provides that "Employers shall be liable for the damages caused by their employees acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

Defendant-appellee also contends that when the judgment in Criminal Case No. 2607 of the Municipal Court of Bacolod was rendered against the driver Segundino Estanda, plaintiff did not reserve the civil action and thus he lost his right thereto and consequently the present action against the defendant-appellee would not lie. This contention, however, is untenable, for Article 33 of the Civil Code clearly provides:

"Art. 33. In cases of physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Wherefore, the order of dismissal entered by the lower court is hereby revoked and the case remanded to said court for further proceedings. Without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Conception, and Felix, JJ., concur.

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