

JOSE G. TAMAYO; PETITIONER, VS. INOCENCIO AQUINO, ET AL., AND SILVESTRE KAYOS, RESPONDENTS. SILVESTRE KAYOS, PETITIONER, VS. JOSE G. TAMAYO AND INOCENCIO AQUINO ET AL., RESPONDE...*G.R. Nos. 12634 and 12720. May 29, 1959*

Ponente: LABRADOR, J.

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Inocencio Aquino and his children brought this action against Jose G. Tamayo, holder of a certificate of public convenience to operate two trucks for damages for the death of Inocencio's wife, Epifania Gonzales, while riding aboard Tamayo's truck. It is alleged that while his (Inocencio Aquino) wife was making a trip aboard truck with Plate No .TPU-735, it bumped against a culvert on the side of the road in Bugallon, Pangasinan; that as a consequence of this accident Epifania Gonzales was thrown away from the vehicle and two pieces of wood embedded in her skull. as a result of which she died; that the impact of the truck against the culvert was so violent that the roof of the vehicle was ripped off from its body, one fender was smashed and the engine damaged beyond repair. Complaint was filed for the recovery of P10,000 as actual damages, P10,000 as moral damages, and costs.

Upon being summoned, defendant Tamayo answered alleging that the truck is owned by Silvestre Rayos, so he filed a third-party complaint against the latter, alleging that he no longer had any interest whatsoever in the said truck, as he had sold the same before the accident to the third-party defendant Silvestre Rayos. Answering the third-party complaint, Rayos alleged that if any indemnity is due, it should come from Jose G. Tamayo, because he did not have any transaction with him regarding such sale.

The Court of First Instance found that the truck with plate No. TPU-735 was one of the trucks of Tamayo under a certificate of public convenience issued to him; that he had sold it to Rayos in March, 1953, but did not inform the Public Service Commission of the sale until June 30, 1953, one month after the accident. On the basis of the above facts, the Court of First Instance ordered the defend-. ant Tamayo and the third-party defendant Rayos to pay plaintiffs jointly and severally the sum of P6,000 as compensatory damages, and another sum of P5,000 as moral damages, with interest, and authorized the defendant or third-party defendant, whoever should pay the entire amount, to recover from the other any sum in excess of one-half of the amount ordered to be paid, with interest.

The court also dismissed the third-party complaint.

Appeal against the above decision was made to the Court of Appeals. This court affirmed the judgment of the Court of First Instance in all respects, and against this judgment certiorari was issued by us on separate petitions of Tamayo and Rayos.

Tamayo claims exemption from liability, arguing that the owner and operator of the truck at the time the accident was not he but Rayos. In answer we state that we have already held in the cases of *Medina vs. Cresencia*, 99 Phil., 506; 52 Off. Gaz., (11) 4606; *Timbol vs. Osias*, 98 98 Phil., 432; 52 Off. Gaz. (3) 1392; *Montoya vs. Ignacio*, 94 Phil., 182; 50 Off. Gaz., 108, and *Roque vs. Malibay*, L-8561, Nov. 18, 1955, that the registered owner of a public

service vehicle is responsible for damages that may be caused to any of the passengers therein, even if the said vehicle had already been sold leased or transferred to another person who was, at the time of the accident, actually operating the vehicle. This principle was also reaffirmed in the case of *Erezo vs. Jepte*, 102 Phil., 103. The reason given by us for the above liability imposed upon the registered owner of the vehicle under a certificate of public convenience is as follows:

"* * * we hold with the trial court that the law does not allow him to do so; the law, with its aim and policy in mind, does not relieve him directly of the responsibility that the law fixes and places upon him as an incident or consequence of registration. Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person, actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is, to prove that a third person or another has become the owner, so that he may thereby be relieved of the responsibility to the injured." (*Erezo vs. Jepte*, supra).

The decision of the Court of Appeals is also attacked insofar as it holds that inasmuch as the third-party defendant had used the truck) on a route not covered by the registered owner's franchise, both the registered owner and the actual owner and operator should be considered as joint tortfeasors and should be made liable in accordance with Article 2194 of the Civil Code. This Article is as follows:

"Art. 2194. , The responsibility of two or more persons who are liable for. a quasi-relict is solidary."

But the action instituted in the case at bar is one for breach of contract, for failure of the defendant to carry safely the deceased to her destination. The liability for which he is made responsible, i. e., for the death of the passenger, may not be considered as arising from a quasi delict. As the registered owner Tamayo and his transferee Rayos may not be held guilty of tort or a quasi-delict; their responsibility is not solidary as held by the Court of Appeals.

The question that poses, therefore, is how should the holder of the certificate of public convenience Tamayo participate with his transferee, operator Rayos, in the damages recoverable by the heirs of the deceased passenger, if their liability is not that of joint tortfeasors in accordance with Article 2194 of the Civil Code. The following considerations must be borne in mind in determining this question. As Tamayo is the registered owner of the truck, his responsibility to the public or to any passenger riding in the vehicle or truck must be direct, for the reasons given in our decision in the case of *Erezo vs. Jepte*, supra, as quoted above. But as the transferee, who operated the vehicle when the passenger died, is the one directly responsible for the accident and death he should in turn be made responsible to the registered owner for what the latter may have been adjudged to pay. In operating the truck without transfer thereof having been approved by the Public Service Commission, the transferee acted merely as agent of the registered owner and should be responsible to him (the registered owner), for any damages that he may cause the latter by his negligence. In the case at bar, the court found, furthermore, that in spite of the fact that the agreement between Tamayo and Rayos was for Rayos to use the truck in carrying of gasoline, the latter used the same in transporting passengers outside the route covered by the franchise of Tamayo. For this additional reason, the agent or Rayos must be held responsible to the registered owner, to the extent that the latter may suffer damage by reason of the death caused during the accident. The responsibility of the transferee was already adverted to by us in the case of *Erezo vs. Jepte*, supra, when we held expressly:

"In synthesis, we hold that the registered owner, the defendant-appellant herein, is primarily responsible for the

damage caused to the vehicle of the plaintiff-appellee, but he (defendant-appellant) has a right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused to the plaintiff-appellant." (Erezo vs. Jepte, supra.)

We hereby affirm that the responsibility of the transferee of the public vehicle be as above denied.

The procedural means by which the liability of the transferee to the holder of the certificate should be enforced is that indicated by us in the above-quoted portion of the case of Erezo vs. Jepte. This procedure was adopted by Tamayo, the defendant herein, when he presented a third-party complaint against Rayos. The courts below should not have dismissed this third-party complaint, and should have adjudged the responsibility to make indemnity in accordance therewith. The transferee is liable to indemnify the registered owner for the damages that the latter may be required to pay for the accident, hence the remedy is by third-party complaint (See Rule 12, Rules of Court).

We now come to the question of the damages that the Court of Appeals and the Court of First Instance awarded to the plaintiffs. The actual or compensatory damage of P6,000 is not seriously questioned by any of the defendants, but the award of P5,000 as moral damages is questioned by them in this appeal. We agree with the appellants that as the responsibility of Tamayo and his agent Rayos is culpa-contractual, no award of moral damages can be given. The law on this matter is expressed in Article 2220 of the Civil Code, which provides:

"Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies, to breaches of contract where the defendant acted fraudulently or in bad faith."

Both the Court of First Instance and the Court of Appeals considered the violation of the rules of the Public Service Commission prohibiting transfer of public vehicles without approval by the Commission as justifying the award of moral damages. We believe⁴ that both courts erred. The law expressly provides that award of moral damages can be made in a suit for breach of contract only when the defendants acted fraudulently or in bad faith. We do not believe that the holder of the certificate, defendant Tamayo, was guilty of fraud or bad faith. There appears to be no fraud at all in the transfer. Transfers are prohibited only if made without approval by the Public Service Commission. There may have been a violation of the regulations because Tamayo did not secure a previous authority to transfer from said Commission, but he actually applied for and obtained said permission or approval about a month after the accident. Besides, the truck was transferred to Rayos with the understanding that the same was not to be used as a public convenience, so that insofar as Tamayo is concerned, there could have been no shade or tint of bad faith at all. Consequently, the ground upon which moral damages may be demanded from him by the plaintiffs does not exist.

Neither can we find that there was fraud or bad faith committed on the part of the transferee or agent. There may have been a breach of the agreement between Tamayo and Rayos, but this was not the immediate cause of the accident. It was the negligence of the driver. What the law would seem to consider as bad faith which may furnish a ground for the award of moral damages in the case at bar would be bad faith in the securing and in the execution of the contract and in the enforcement of its terms (Article 1338, Civil Code), or any other kind of deceit which may have been used by both defendants. None can be said to have been present in the case at bar. There was no bad faith on the part of the agent Rayos; there was negligence of the driver employed by him, but this is certainly not bad faith on defendants' part contemplated by law.

For the foregoing considerations, the judgment appealed from is hereby modified, in that the defendant-appellant Tamayo is hereby ordered to pay to the plaintiff-appellees the sum of P6,000 as compensatory damages for the death of the deceased, but that he (Tamayo) has the right to be indemnified by third-party defendant-appellant

Rayos of the amount he is hereby ordered to pay. With costs against appellants.

Paras, C. J., Bengzon, Montemayor, Reyes, A. Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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