

**FRANCISCA VILUAN, PETITIONER, VS. THE COURT OF APPEALS,
PATRICIO HUFANA AND GREGORIO HUFANA, RESPONDENTS.***G.R. Nos. 21477-81. April 29, 1966*

Ponente: REGALA, J.

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Seven persons were killed and thirteen others were injured in Bangar, La Union, on February 16, 1958, when a passenger bus on which they were riding caught fire after hitting a post and crashing against a tree. The bus, owned by petitioner and driven by Hermenegildo Aquino, came from San Fernando, La Union and was on its way to Candon, Ilocos Sur.

It appears that, as the bus neared the gate of the Gabaldon school building in the municipality of Bangar, another passenger bus owned by Patricio Hufana and driven by Gregorio Hufana tried to overtake it but that instead of giving way, Aquino increased the speed of his bus and raced with the overtaking bus. Aquino lost control of his bus as a result of which it hit a post, crashed against a tree and then burst into flames.

Among those who perished were Timoteo Mapanao, Francisca Lacsamana, Narcisa Mendoza and Gregorio Sibayan, whose heirs sued petitioner and the latter's driver, Hermenegildo Aquino, for damages for breach of contract of carriage. Carolina Sabado, one of those injured, also sued petitioner and the driver for damages. The complaints were filed in the Court of First Instance of La Union.

In their answer, petitioner and her driver blamed respondent Gregorio Hufana for the accident. With leave of court, they filed third party complaints against Hufana and the latter's employer, Patricio Hufana.

After trial, the court found that the accident was due to the concurrent negligence of the drivers of the two buses and held both, together with their respective employers, jointly and severally liable for damages.

The dispositive portion of its decision reads:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered, declaring the plaintiffs entitled to damages to be paid jointly and severally by the defendants and third-party defendants as follows:

(1) For plaintiff Juliana C. Vda. de Mapanao for the death of her son Timoteo Mapanao, the sum of P5,000.00 for actual damages, P1,000.00 as moral damages and P250.00 as attorney's fees;

(2) For plaintiff Leon Lacsamana for the death of his daughter Francisca Lacsamana, the sum of P4,000.00 as actual damages, P1,000.00 as moral damages and P250.00 as attorney's fees;

(3) For plaintiff Juan Mendoza and Magdalena Mendoza for the death of their mother Narcisa Mendoza, the sum of P4,000.00 for actual damages, P1,000.00 for moral damages, and P250.00 as attorney's fees;

(4) For plaintiffs Agustina Sabado, Quintin Sibayan, Julita Sibayan, Primitivo Sibayan and Avelina Sibayan, the sum of P4,000.00 for actual damages, P1,500.00 for moral damages and P250.00 as attorney's fees.

(5) For the injured passenger Carolina Sabado, P649.00 for actual damages, P1,500.00 for moral damages and

P250.00 for attorney's fees.

All such amounts awarded as damages shall bear interest at the legal rate of six per cent (6%) per annum from the date of this decision until the same shall have been duly paid in full.

Defendants and third-party defendants are further ordered to pay proportionate costs."

Both petitioner and her driver and the respondents therein appealed to the Court of Appeals. While affirming the finding that the accident was due to the concurrent negligence of the drivers of both the Viluan and the Hufana buses, the Court of Appeals differed with the trial court in the assessment of liabilities of the parties. In its view only petitioner Francisca Viluan, as operator of the bus, is liable for breach of contract of carriage. The driver, Hermenegildo Aquino, cannot be made jointly and severally liable with petitioner because he is merely the latter's employee and is in no way a party to the contract of carriage. The court added, however—

"Hermenegildo Aquino is not entirely free from liability. He may be held liable, criminally and civilly, under the Revised Penal Code (Article 100 and 103), but not in a civil suit for damages predicated upon a breach of contract, such as this one (Aguas, et al. vs. Vargas, et al., CA G.R. No. 27161-R, Jan. 22, 1963). Furthermore, the common carrier, Francisca Viluan, could recover from Aquino any damages that she might have suffered by reason of the latter's negligence."

Neither may respondents Patricio Hufana and Gregorio Hufana be held liable in the opinion of the appellate court because the plaintiffs did not amend complaints in the main action so as to assert a claim against respondents as third party defendants.

The appellate court likewise disallowed the award of moral damages for P1,000 to Carolina Sabado, there being no showing that the common carrier was guilty of fraud or bad faith in the performance of her obligation. Accordingly, it rendered judgment as follows:

"IN VIEW OF ALL THE FOREGOING, we hereby find defendant-appellant Francisca Viluan solely liable to the plaintiffs-appellees for the damages and attorney's fees awarded to them by the court below and further declare null and void the lower court's award of moral damages in the amount of P1,000.00 in favor of plaintiff Carolina Sabado. Thus modified, the judgment appealed from is affirmed in all other respects, with costs in this instance against defendant-appellant Francisca Viluan.

From this judgment petitioner brought this appeal. In brief, her position is that since the proximate cause of the accident was found to be the concurrent negligence of the drivers of the two buses, then she and respondent Patricio and Gregorio Hufana should have been held equally liable to the plaintiffs in the damage suits. The fact that the respondents were not sued as principal defendants but were brought into the cases as third party defendants should not preclude a finding of their liability.

We agree with petitioner's contention. To begin with, the Court of Appeals' ruling is based on section 5 of Rule 12 of the former Rules of Court,[1] which was adopted from Rule 14-a of the Federal Rules of Civil Procedure. While the latter provision has indeed been held to preclude a judgment in favor of a plaintiff and against a third party defendant where the plaintiff has not amended his complaint to assert a claim against a third party defendant,[2] yet, as held in subsequent decisions, this rule applies only to cases where the third party defendant is brought in on an allegation of liability to the defendants. The rule does not apply where a third party defendant is impleaded on the ground of direct liability to the plaintiffs, in which case no amendment of the plaintiff's complaint is necessary.[3] As explained in the *Atlantic Coast Line R. Co. vs. U.S. Fidelity & Guaranty Co.*, 52 F. Supp. 177 (1943):

"From the sources of Rule 14 and the decisions herein cited, it is clear that this rule, like the admiralty rule, 'covers two distinct subjects, the addition of parties defendant to the main cause of action, and the bringing in

of a third party for a defendant's remedy over.' * * *

"If the third party complaint alleges facts showing a third party's direct liability to plaintiff on the claim set out in plaintiff's petition, then third party "shall" make his defenses as provided in Rule 12 and his counterclaims against plaintiff as provided in Rule 13. In the case of alleged direct liability, no amendment is necessary or required. The subject-matter of the claim is contained in plaintiff's complaint, the ground of third party's liability on that claim is alleged in third party complaint, and third party's defense to his alleged liability on the claim is set up in his answer to plaintiff's complaint. At that point and without amendment, the plaintiff and third party are at issue as to their rights respecting the claim.

"The provision in the rule that, 'The third-party defendant may assert any defenses which the third-party plaintiff may assert to the plaintiff's claim,' applies to the other subject, namely, the alleged liability of third party defendant. The next sentence in the rule, 'The third-party defendant is bound by the adjudication of the third party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff,' applies to both subjects. If third party is brought in as liable only to defendant and judgment is rendered adjudicating plaintiff's right to recover against defendant and defendant's right to recover against third party, he is bound by both adjudications. That part of the sentence refers to the second subject. If third party is brought in as liable to plaintiff, then third party is bound by the adjudication as between him and plaintiff. That refers to the first subject. If third party is brought in as liable to plaintiff and also over to defendant, then third party is bound by both adjudications. The next sentence in the rule, 'The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant,' refers to the second subject, that is, to bringing in third party as liable to defendant only, and does not apply to the alleged liability of third party directly to plaintiff."

In this case the third party complaints filed by petitioner and her driver charged respondents with direct liability to the plaintiffs. It was contended that the accident was due "to the fault, negligence, carelessness and imprudence of the third party defendant Gregorio Hufana" and, in petitioner's motion for leave to file a third party complaint, it was stated that "Patricio Hufana and Gregorio Hufana were not made parties to this action, although the defendants are entitled to indemnity and/or subrogation against them in respect of plaintiff's claim."

It should make no difference therefore whether the respondents were brought in as principal defendants or as third-party defendants. As Moran points out, since the liability of the third-party defendant is already asserted in the third-party complaint, the amendment of the complaint to assert such liability is merely a matter of form, to insist on which would not be in keeping with the liberal spirit of the Rules of Court.[4]

Nor should it make any difference that the liability of petitioner springs from contract while that of respondents arises from quasi-delict. As early as 1931, we already ruled in *Gutierrez vs. Gutierrez*, 56 Phil. 177,[5] that in case of injury to a passenger due to the negligence of the driver of the bus on which he was riding and of of the driver of another vehicle, the drivers as well as the owners of the two vehicles are jointly and severally liable for damages. Some members of the Court, though, are of the view that under the circumstances they are liable on quasi-delict.

Wherefore, the decision appealed from is hereby modified in the sense that petitioner as well as respondents Patricio Hufana and Gregorio Hufana are jointly and severally liable for the damages awarded by the trial court. The disallowance of moral damages in the amount of P1,000.00 is correct and should be affirmed. No costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Dizon, Makalintal, Zaldivar, and Sanchez, JJ., concur.

[1] This provision, which is not reproduced in the new Rules of Court, is as follows:

Complaint amendment.—The plaintiff may amend his pleadings to assert against the third-party defendant any

claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant.

[2] See e.g., *Thompson vs. Cranston*, *Brown vs. Cranston*, 2 F.R.D. 270 (1942).

[3] *Atlantic Coast Line R. Co. vs. United States Fidelity & Guaranty Co.*, 52 F. Supp. 177 (1943); *Lommer vs. Scranton-Spring Brook Water Service Co.*, 4 F.R.D. 104 (1944)

[4] I Moran, *Comments on the Rules of Court* 205 (1957).

[5] See also *Paulan vs. Sarabia*, G. R. No. L-10542, July 31, 1958.

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