

THIRD DIVISION

[G.R. No. 243237, February 17, 2020]

HEIRS OF CATALINA P. MENDOZA, PETITIONERS, VS. ES TRUCKING AND FORWARDERS, RESPONDENT.

DECISION

CARANDANG, J.:

Challenged in this Petition for Review on *Certiorari*^[1] under Rule 45 is the Decision^[2] dated February 15, 2018 of the Court of Appeals (CA) in CAG.R. CV No. 04394-MIN, affirming the Decision^[3] dated April 21, 2016 of the Regional Trial Court (RTC) of Zamboanga City, Branch 12, in Civil Case No. 6538, dismissing the complaint for damages filed by petitioners Heirs of Catalina P. Mendoza (Heirs of Catalina). Likewise assailed is the Resolution^[4] dated September 25, 2018 denying the Motion for Reconsideration of the Heirs of Catalina.^[5]

The Antecedents

On June 13, 2013, at around noontime, Catalina P. Mendoza (Catalina) was walking along Sta. Maria Road after visiting a lotto outlet nearby. While she was at the center of the road and attempting to cross its second half, she was sideswiped by a 14-wheeler prime mover truck at the junction of Gov. Ramos Street and Sta. Maria Road in Zamboanga City. The prime mover truck bore body no. 5 and green plate no. NAO 152,^[6] while the trailer attached to it had yellow plate no. JZA163.^[7] The vehicle is registered under the name of ES Trucking and Forwarders (ES Trucking)^[8] with Sumarni Asprer Ruste as its sole proprietor.^[9] At the time of the incident, the vehicle was driven by Clin Tintim (Tintim), a holder of professional driver's license no. 104-99-069007.^[10]

Moments before the incident, Tintim claimed that he stopped the vehicle at the crossing lane as the tricycle in front of the prime mover truck stopped and only began to accelerate once the tricycle started moving.

The two sons of Catalina picked her up from under the fuel tank of the prime mover truck behind its front left tire and brought her to Ciudad Medical Zamboanga where she was pronounced dead.^[11] Catalina suffered multiple abrasions and contusions in the clavicle area, lacerated wound on the cheek, and multiple abrasions on the abdomen.^[12] She also suffered multiple rib fractures.^[13] The immediate cause of death, stated in her Certificate of Death,^[14] is "Cardio-Pulmonary Arrest Sec. to Vehicular Accident."^[15]

At the time of the incident, the prime mover truck was on its way back to San Roque after having delivered kitchenware merchandise to its customer, Suani Enterprises.^[16]

On February 19, 2013, the counsel of the Heirs of Catalina sent a demand letter to ES Trucking seeking reimbursement for the actual expenses incurred in the amount of P470,197.05, P250,000.00 as moral damages, and attorney's fees equivalent to 10% of the total claim.^[17] ES Trucking offered financial assistance of P200,000.00 and the proceeds from the third-party liability insurance in the amount of P100,000.00, but the Heirs of Catalina refused the offer. Instead, they insisted on the amount they were claiming.^[18]

On April 24, 2013, a Certification to File Action was issued after the parties failed to reach a settlement.^[19]

A criminal case for Reckless Imprudence resulting to Homicide was filed against the driver in the Municipal Trial Court in Cities (MTCC) docketed as Criminal Case No. 50864 (1-6564).^[20] The complaint for quasi-delict against ES Trucking was separately filed in the RTC of Zamboanga City, Branch 12, docketed as Civil Case No. 6538.^[21]

Incidentally, in Criminal Case No. 50864 (1-6564), the MTCC found Timtim guilty of Reckless Imprudence resulting to homicide and sentenced him to serve an indeterminate penalty of imprisonment ranging from four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, six (6) months and 21 days of *prision correccional*, as maximum.^[22] Timtim applied for probation and has since been released. On March 10, 2016, an Entry of Judgment^[23] was issued certifying that the Decision of the MTCC dated December 15, 2015 became final and executory on February 2, 2016.

Ruling of the Regional Trial Court

On April 21, 2016, the RTC rendered a Decision,^[24] the dispositive portion of which reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered **DISMISSING** the above-entitled case for insufficient evidence and want of cause of action against the Defendant herein. No cost.

SO ORDERED.^[25]

The RTC found no evidence of recklessness that can be attributed to the driver of the truck. PO3 Marlon V. Agbalos (PO3 Agbalos) testified that he cannot point to any negligent act of the driver, since the truck was coursing through the proper lane when the incident happened. The RTC concluded that Catalina was not bumped on the front side of the truck but most probably on the left side of the vehicle, as she appeared not to have been run over by its front tire. The RTC surmised that the victim may have attempted to cross the street while the truck was already in motion and traffic was already moving on both sides of the street when she was sideswiped. Since there is no finding of negligence or recklessness on the part of the driver, the RTC concluded that the action for quasi-delict based on ES Trucking's vicarious liability must fail.^[26]

Ruling of the Court of Appeals

In the Decision^[27] dated February 15, 2018, the CA affirmed the ruling of the RTC.^[28] The CA held that it was incorrect for the Heirs of Catalina to conclude that a criminal conviction will establish ES Trucking's civil liability. For the CA, even if there is such negligence, the employer may defend itself through proof that it exercised due diligence in the selection and supervision of its employees. To rule otherwise will create an absurd result, where the case for quasi-delict is already prejudged and predetermined by the guilty verdict in the Reckless Imprudence case, thus rendering the proceedings in the former without purpose at all.^[29] It was ruled that judicial notice of the subsequent finality of the judgment of the MTCC in the Reckless Imprudence case is discretionary only.^[30]

Based on the records, the CA found that there was no sufficient evidence of negligence because: (1) none of the petitioners' witnesses saw the moment of impact; (2) ES Trucking's witnesses saw no person walk across the street or in front of the truck; (3) there was no warning beforehand that a person could have crossed the street as there was no possible threat or obstacle in front of the truck; and (4) the police investigator confirmed that he saw no evidence of negligent driving. The CA concluded that the death of Catalina was brought about by a terrible accident, which could only be blamed on being in the wrong place at the wrong time. The CA noted that caution and exercise of due diligence must be exercised by all persons, drivers, and pedestrians alike in the use of streets.^[31]

The Heirs of Catalina filed a Motion for Reconsideration, which was denied ^[32] in the Resolution^[33] dated September 25, 2018.

In the present petition, the Heirs of Catalina maintain that ES Trucking did not exercise due diligence of a good father of a family in the selection and supervision of the driver because it hired a driver who did not have the necessary training for driving a trailer truck pursuant to Department Order No. 2011-25 issued by Department of Transportation (DOTr).^[34] The Heirs of Catalina further argue that the Court should take cognizance of the existence of negligence established from the driver's conviction. As the Heirs of Catalina argue on the belief that ES Trucking is a common carrier, there is a presumption of negligence that may only be defeated if evidence of observance of the diligence required by law is presented. Due to the alleged failure of ES Trucking to present such evidence, the Heirs of Catalina insist that they are entitled to damages.^[35]

On the other hand, ES Trucking insists in its Comment^[36] that it cannot be held vicariously liable for damages as there is no sufficient evidence that Timtim was negligent. ES Trucking argues that it had successfully proven its diligence not only in the selection but also in the supervision of its driver.^[37]

Issues

The issues to be resolved are:

- (1) Whether Clin Timtim was negligent in driving the vehicle that caused the death of Catalina to hold his employer ES Trucking liable under Article 2180 of the New Civil Code;
- (2) Whether the complaint for quasi-delict against ES Trucking, Timtim's employer, may proceed independently of the criminal action for Reckless Imprudence resulting to Homicide;

- (3) Whether ES Trucking is a common carrier required by law to observe extraordinary diligence in the carriage of passengers and goods.
- (4) Whether ES Trucking exercised due diligence in the selection and supervision of its driver, Timtim; and
- (5) Whether the Heirs of Catalina are entitled to damages.

The Court's Ruling

Timtim was recklessly driving the prime mover truck that caused the death of Catalina Mendoza.

It would be a grave injustice to simply accept the testimony of PO3 Agbalos and adopt the conclusion of the CA that the terrible incident "could only be blamed on being in the wrong place at the wrong time."^[38] This incident would not have happened had Timtim been vigilant in checking his front, rear, and side mirrors for any obstruction on the road, and had he timely stepped on his breaks to avoid hitting Catalina.

Contrary to the ruling of the lower courts, the fact that the truck was traveling on the right lane when the incident happened does not automatically mean that the driver was not negligent. Catalina had already crossed half of the road when she was sideswiped by the vehicle driven by Timtim. This is the reason why her body was found under the fuel tank behind the left front wheel of the truck.^[39] Had he been driving with caution, he would have seen that Catalina was already attempting to cross the second half of the road in front of him. A prudent driver would have immediately slowed down and stopped the vehicle to give way to the pedestrian crossing the road.

It is also worthy to point out that in the Appellee's Brief,^[40] which ES Trucking filed with the CA, the conviction of Timtim for Reckless Imprudence resulting in Homicide in Criminal Case NO. 50864 (1-6564) was admitted.^[41] The finding of negligence on the part of Timtim made by the MTCC is consistent with Our pronouncement that Timtim was negligent at the time of the incident.

A civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking.

Under the Rules, when "a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action."^[42] However, the civil action referred to in Articles 32, 33, 34, and 2176 of the New Civil Code shall "proceed independently of the criminal action and shall require only a preponderance of evidence."^[43]

Furthermore, it is explicitly stated in Article 2177 of the Civil Code that responsibility arising from quasi-delict "is entirely separate and distinct from the civil liability arising from negligence under the Penal Code."^[44] The same rule finds support from Article 31 of the same Code which states that when "the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil

action may proceed independently of the criminal proceedings and regardless of the result of the latter."^[45] Therefore, regardless of the outcome of the criminal case for reckless imprudence resulting to homicide instituted against Timtim, a civil case for quasi-delict may proceed independently against Timtim's employer, ES Trucking, under Article 2180 of the New Civil Code.

ES Trucking is considered a common carrier required to secure a Certificate of Public Convenience.

Article 1732 of the Civil Code defines common carriers as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

The Land Transportation and Traffic Code distinguished the classification of vehicles as follows:

x x x x

(a) *Private*. - Motor vehicles registered under this classification shall not be used for hire under any circumstance.

(b) *For Hire*. - Motor vehicles registered under this classification are those covered by certificates of public convenience, or special permits issued by the Board of Transportation, and shall be subject to the provisions of the Public Service Act and the rules and regulations issued thereunder, as well as the provisions of this Act.

x x x x^[46]

The requirement for vehicles for hire to obtain a Certificate of Public Convenience from the Land Transportation Franchising and Regulatory Board (LTFRB) was emphasized in LTFRB Memorandum Circular Number 98-027 which explicitly states:

Subject: **FRANCHISE FOR DUMP TRUCK AND OTHER PRIVATE VEHICLES USED AS "FOR HIRE"**

Pursuant to the provisions of Section 13 of C.A. No. 146, as amended (otherwise known as the Public Service Act), in relation to Section 15, thereof, a motorized vehicle used as public land transportation shall first secure a Certificate of Public Convenience or franchise before it can be operated as "for-hire".

In view hereof, **the owners of all dump/ cargo truck or and other private vehicles rented out for a fee, are hereby required to apply for and secure franchises from this Board or from its regional offices in their respective jurisdictions, to legitimize their operation.**

Parties, customers, or clients of dump/ cargo truck or private vehicle providers are urged to require the production/ presentation by the operators of the franchise or authority from the Board to operate the services offered before hiring them.