353 Phil. 305

SECOND DIVISION

[G.R. No. 124922, June 22, 1998]

JIMMY CO, DOING BUSINESS UNDER THE NAME & STYLE DRAGON METAL MANUFACTURING, PETITIONER, VS. COURT OF APPEALS AND BROADWAY MOTOR SALES CORPORATION, RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

On July 18, 1990, petitioner entrusted his Nissan pick-up car 1988 model[1] to private respondent - which is engaged in the sale, distribution and repair of motor vehicles - for the following job repair services and supply of parts:

- Bleed injection pump and all nozzles;
- Adjust valve tappet;
- Change oil and filter;
- Open up and service four wheel brakes, clean and adjust;
- Lubricate accelerator linkages;
- Replace aircon belt; and
- Replace battery[2]

Private respondent undertook to return the vehicle on July 21, 1990 fully serviced and supplied in accordance with the job contract. After petitioner paid in full the repair bill in the amount of P1,397.00,[3] private respondent issued to him a gate pass for the release of the vehicle on said date. But came July 21, 1990, the latter could not release the vehicle as its battery was weak and was not yet replaced. Left with no option, petitioner himself bought a new battery nearby and delivered it to private respondent for installation on the same day. However, the battery was not installed and the delivery of the car was rescheduled to July 24, 1990 or three (3) days later. When petitioner sought to reclaim his car in the afternoon of July 24, 1990, he was told that it was carnapped earlier that morning while being road-tested by private respondent's employee along Pedro Gil and Perez Streets in Paco, Manila. Private respondent said that the incident was reported to the police.

Having failed to recover his car and its accessories or the value thereof, petitioner filed a suit for damages against private respondent anchoring his claim on the latter's alleged negligence. For its part, private respondent contended that it has no liability because the car was lost as a result of a fortuitous event - the carnapping. During pre-trial, the parties agreed that:

> "(T)he cost of the Nissan Pick-up four (4) door when the plaintiff purchased it from the defendant is P332,500.00 excluding accessories which were installed in the vehicle by the plaintiff consisting of four (4) brand new tires, magwheels, stereo speaker, amplifier which amount all in all to P20,000.00. It is agreed that the vehicle was lost on July 24,

> 1990 `approximately two (2) years and five (5) months from the date of the purchase.' It was agreed that the plaintiff paid the defendant the cost of service and repairs as early as July 21, 1990 in the amount of P1,397.00 which amount was received and duly receipted by the defendant company. It was also agreed that the present value of a brand new vehicle of the same type at this time is P425,000.00 without accessories."[4]

They likewise agreed that the sole issue for trial was who between the parties shall bear the loss of the vehicle which necessitates the resolution of whether private respondent was indeed negligent.[5] After trial, the court *a quo* found private respondent guilty of delay in the performance of its obligation and held it liable to petitioner for the value of the lost vehicle and its accessories plus interest and attorney's fees.[6] On appeal, the Court of Appeals (CA) reversed the ruling of the lower court and ordered the dismissal of petitioner's damage suit.[7] The CA ruled that: (1) the trial court was limited to resolving the issue of negligence as agreed during pre-trial; hence it cannot pass on the issue of delay; and (2) the vehicle was lost due to a fortuitous event.

In a petition for review to this Court, the principal query raised is whether a repair shop can be held liable for the loss of a customer's vehicle while the same is in its custody for repair or other job services?

The Court resolves the query in favor of the customer. First, on the technical aspect involved. Contrary to the CA's pronouncement, the rule that the determination of issues at a pre-trial conference bars the consideration of other issues on appeal, except those that may involve privilege or impeaching matter,[8] is inapplicable to this case. The question of delay, though not specifically mentioned as an issue at the pre-trial may be tackled by the court considering that it is necessarily intertwined and intimately connected with the principal issue agreed upon by the parties, i.e. who will bear the loss and whether there was negligence. Petitioner's imputation of negligence to private respondent is premised on delay which is the very basis of the former's complaint. Thus, it was unavoidable for the court to resolve the case, particularly the question of negligence without considering whether private respondent was guilty of delay in the performance of its obligation.

On the merits. It is a not a defense for a repair shop of motor vehicles to escape liability simply because the damage or loss of a thing lawfully placed in its possession was due to carnapping. Carnapping *per se* cannot be considered as a fortuitous event. The fact that a thing was unlawfully and forcefully taken from another's rightful possession, as in cases of carnapping, does not automatically give rise to a fortuitous event. To be considered as such, carnapping entails more than the mere forceful taking of another's property. It must be proved and established that the event was an act of God or was done solely by third parties and that neither the claimant nor the person alleged to be negligent has any participation.[9] In accordance with the Rules of evidence, the burden of proving that the loss was due to a fortuitous event rests on him who invokes it[10]- which in this case is the private respondent. However, other than the police report of the alleged carnapping incident, no other evidence was presented by private respondent to the effect that the incident was not due to its fault. A police report of an alleged crime, to which only private respondent is privy, does not suffice to established the carnapping. Neither does it prove that there was no fault on the part of private respondent

notwithstanding the parties' agreement at the pre-trial that the car was carnapped. Carnapping does not foreclose the possibility of fault or negligence on the part of private respondent.

Even assuming *arguendo* that carnapping was duly established as a fortuitous event, still private respondent cannot escape liability. Article 1165[11] of the New Civil Code makes an obligor who is guilty of delay responsible even for a fortuitous event until he has effected the delivery. In this case, private respondent was already in delay as it was supposed to deliver petitioner's car three (3) days before it was lost. Petitioner's agreement to the rescheduled delivery does not defeat his claim as private respondent had already breached its obligation. Moreover, such accession cannot be construed as waiver of petitioner's right to hold private respondent liable because the car was unusable and thus, petitioner had no option but to leave it.

Assuming further that there was no delay, still working against private respondent is the legal presumption under Article 1265 that its possession of the thing at the time it was lost was due to its fault.[12] This presumption is reasonable since he who has the custody and care of the thing can easily explain the circumstances of the loss. The vehicle owner has no duty to show that the repair shop was at fault. All that petitioner needs to prove, as claimant, is the simple fact that private respondent was in possession of the vehicle at the time it was lost. In this case, private respondent's possession at the time of the loss is undisputed. Consequently, the burden shifts to the possessor who needs to present controverting evidence sufficient enough to overcome that presumption. Moreover, the exempting circumstances - earthquake, flood, storm or other natural calamity - when the presumption of fault is not applicable[13] do not concur in this case. Accordingly, having failed to rebut the presumption and since the case does not fall under the exceptions, private respondent is answerable for the loss.

It must likewise be emphasized that pursuant to Articles 1174 and 1262 of the New Civil Code, liability attaches even if the loss was due to a fortuitous event if "the nature of the obligation requires the assumption of risk".[14] Carnapping is a normal business risk for those engaged in the repair of motor vehicles. For just as the owner is exposed to that risk so is the repair shop since the car was entrusted to it. That is why, repair shops are required to first register with the Department of Trade and Industry (DTI)[15] and to secure an insurance policy for the "shop covering the property entrusted by its customer for repair, service or maintenance" as a pre-requisite for such registration/accreditation.[16] Violation of this statutory duty constitutes negligence *per se*.[17] Having taken custody of the vehicle, private respondent is obliged not only to repair the vehicle but must also provide the customer with some form of security for his property over which he loses immediate control. An owner who cannot exercise the seven (7) juses or attributes of ownership – the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate and to the fruits -[18] is a crippled owner. Failure of the repair shop to provide security to a motor vehicle owner would leave the latter at the mercy of the former. Moreover, on the assumption that private respondent's repair business is duly registered, it presupposes that its shop is covered by insurance from which it may recover the loss. If private respondent can recover from its insurer, then it would be unjustly enriched if it will not compensate petitioner to whom no fault can be attributed. Otherwise, if the shop is not registered, then the presumption of negligence applies.