

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB CV NO. 01303, June 27, 2014]

**ANSELMO SERAFIN, PLAINTIFF-APPELLEE, VS. NICANDRO
FILART AND JOSE CHUA, DEFENDANT, PERLA COMPANIA DE
SEGUROS, INC., DEFENDANT-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal made by Perla Compania de Seguros, Inc., assailing the Decision^[1] dated July 22, 2005 of the Regional Trial Court, 7th Judicial Region, Branch 23, Cebu City, finding the insured Nicandro Filart guilty of negligence and pronouncing that Perla Compania de Seguros, Inc., was solidarily liable with the former in Civil Case No. CEB-14592 for Damages with Application for Writ of Preliminary Attachment.

The Antecedent Facts

Plaintiff-appellee Anselmo Serafin is a tailor by profession managing two [2] tailoring shops at Carmen, Cebu^[2]. On July 16, 1993 he went to Cebu City in order to purchase cloth which he would be using for his business. After he was done with his transaction, he went to the public transportation terminal between Legaspi and Jakosalem Streets in order to get a ride home to Carmen. When he reached the terminal, he boarded the mini bus on queue owned by his neighbor Nicandro Filart that was being driven by Jose Chua. He was able to find a seat on the left portion of the vehicle, three passengers away from the rear thereof.^[3]

By reason of the slow moving traffic on that day, Anselmo Serafin fell asleep during the travel and was only awakened when the mini bus collided with a tricycle causing injuries on his left elbow. The collision happened at Cabahug Street, Jagobiao, Mandaue City. He immediately went to Consolacion Police Station, reported the incident and proceeded to a clinic for the treatment of his injuries.^[4]

Since the clinic was not properly equipped to treat his injuries, he went to Chong Hua Hospital. He was confined for five [5] days therein and stainless steel was placed inside his hand^[5] in order to correct and align the fracture he sustained during the accident. After his discharge from the hospital, his left hand was still immobile for about six [6] months making it difficult for him to practice his profession. Considering that he spent P30,000.00 for his hospitalization, he asked Nicandro Filart to help defray his expenses by contributing P10,000.00, but he was refused by the former saying he had no money.^[6]

Hence, on September 15, 1995, he instituted a complaint for Damages with application for Writ of Preliminary Attachment against Nicandro Filart and the latter's insurer Perla Compania De Seguros, Inc. [PERLACOMSE], herein defendant-

appellant. The ground relied upon in his application for writ of attachment was that Nicandro Filart intimated to him that he will be selling his mini bus.

His application for writ of attachment was denied by the RTC because his allegations were mere recitals of the grounds for the issuance of a writ of preliminary attachment enumerated under Section 1, Rule 57 of the Rules of Court^[7]. His Motion for Reconsideration^[8] was likewise denied^[9] by the RTC stating that the debtors inability to pay, is not necessarily synonymous with fraudulent intent not to honor an admitted obligation that will justify the issuance of a writ of attachment.

Thereafter, PERLACOMSE in its answer averred that Anselmo Serafin had no cause of action against it on the premise that the contract of insurance is one where when the insured is not liable, the insurer is likewise not liable. Even if the insured is liable, its liability is limited and is subject to the terms and conditions of the insurance.^[10]

Nicandro Filart on the other hand alleged that on July 16, 1993 at around 7:30 o'clock in the evening, his driver Jose Chua was driving his mini bus loaded with passengers going to Carmen. Before reaching Jagobiao, Mandaue City, his driver saw Anselmo Serafin flagging him but since the mini bus was full of passengers already and for fear of incurring a traffic violation he did not stop to pick-up the latter.

Since the flow of traffic was slow moving, unknown to Jose Chua, Anselmo Serafin snuck in to get a ride by holding on to the metal bars on the left rear portion of the vehicle, exposing himself to the perils of travel.

Since Anselmo took a ride on his mini bus without the consent of his driver, he is therefore not a passenger within the meaning and context of the law. Nicandro Filart asserts that he exercised due diligence in the selection of his driver and he supervised the same with utmost diligence of a very cautious person with due regard for all circumstances. Apart from that, the mini bus was regularly and properly maintained being a mechanic by profession he did not allow his mini bus to travel without personally checking and inspecting the same.^[11]

Defendant Jose Chua was served summons and copy of the complaint on February 20, 1994, but he did not tender any answer.^[12] However, no order of default was issued.

After Anselmo Serafin has concluded his testimony, he offered for admission Exhibits "A" to "Q"^[13] with all their sub-markings which were all admitted^[14] by the court *a quo* over the objection of PERLACOMSE^[15] and Nicandro Filart.^[16]

During the course of the trial, PERLACOMSE asked to be dropped as a party defendant because Anselmo Serafin has already claimed and received P5,000.00 from them under the "no fault clause" of the insurance. Thus, upon full payment thereon it has already done its part in accordance with the insurance policy taken by Nicandro Filart.^[17] The court *a quo* denied^[18] the motion of PERLACOMSE stating that the payment made by the latter is mandated by law particularly Section 378 of the Insurance Code and the same shall not be construed as a final settlement of the

entire claim.

Defendant Filart formally offered Exhibit "1^[19]" with its sub-markings.

Thereafter the court *a quo* rendered a decision against the defendants. The dispositive portion of the decision, reads:

"WHEREFORE, premises considered this Court hereby renders judgment in favor of the plaintiff and against the defendants declaring the latter jointly, solidarily (sic) and severally liable to pay plaintiff the following:

1. P30,000.00 for medical/hospitalization expenses;
2. P20,000.00 moral damages;
3. P20,000.00 for exemplary damages;
4. P5,000.00 litigation expenses and
5. P10,000.00 attorney's fees.

SO ORDERED."^[20]

Both defendants appealed the decision before Us. Since Nicandro Filart failed to submit proof of payment of the docket fees, his appeal was dismissed per Resolution^[21] dated January 31, 2012.

PERLACOMSE in support of its appeal raised the following assignment of errors, to wit:

"I. IN FINDING THAT PLAINTIFF-APPELLEE ANSELMO SERAFIN WAS A PASSENGER OF THE VEHICLE DRIVEN BY DEFENDANT JOSE CHUA, WHEN IT MET A VEHICULAR ACCIDENT AT JAGOBIAO, MANDAUE CITY, ON JULY 16, 1993, AT ABOUT 7:45 P.M. IT IS CONTRARY TO THE EVIDENCE ON RECORD AND ESTABLISHED JURISPRUDENCE; AND

II. IN HOLDING OR DECLARING DEFENDANT-APPELLANT PERLACOMSE JOINTLY, SOLIDARILY (sic) AND SEVERALLY LIABLE WITH DEFENDANTS NICANDRO FILART AND JOSE CHUA TO PAY PLAINTIFF-APPELLEE ANSELMO SERAFIN'S CLAIMS FOR MEDICAL/HOSPITALIZATION EXPENSES, MORAL AND EXEMPLARY DAMAGES, LITIGATION EXPENSES AND ATTORNEY'S FEES."^[22]

Our Ruling

The only question left for Our determination is the liability of the insurer, PERLACOMSE. The non-perfection of the appeal by Nicandro Filart puts to rest any question of the court *a quo*'s finding of his negligence along with the status of Anselmo Serafin as a bona fide passenger of the former's mini bus.

PERLACOMSE asserts that the court *a quo* made a mistake in holding them solidarily liable with Nicandro Filart since the contract of insurance was only between it and the latter with the delineated terms and conditions. The insurance was only for passenger and third party liabilities. On third party liability, PERLACOMSE set the limit at P20,000.00 and for the passenger liability at P12,000.00 per person; and at P40,000.00 per accident.^[23]