

## TWENTY-SECOND DIVISION

[ CA-G.R. SP NO. 04895-MIN, February 04, 2015 ]

**NIDA Q. BASOY, PETITIONER, VS. DAX GONZAGA XENOS,  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 34,  
PANABO CITY, CRESENCIO K. RAMILLANO, WEENA BUS LINES  
(WEENA EXPRESS) AND BERNARDO VALDEVIESO,  
RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

Nida Q. Basoy, a mother whose daughter was killed in a vehicular accident, petitions this Court under Rule 65 of the Rules of Court to set aside and annul the February 6, 2012<sup>[1]</sup> and April 13, 2012<sup>[2]</sup> Orders of the public respondent Judge Dax Gonzaga Xenos, in his capacity as presiding Judge of the Regional Trial Court, Branch 34, Panabo City (court a *quo*) which denied petitioner's motion to impose subsidiary liability on private respondents Weena Bus Lines and/or Bernardo Valdevieso.<sup>[3]</sup>

#### The Facts:

At around 5:30 in the morning of September 16, 1998, a passenger bus owned and operated by Weena Express, Inc. bearing plate No. MVG-321 driven by private respondent Cresencio K. Ramillano (Ramillano) and a passenger motorcycle registered in the name of Patrona Arellano driven by Abner Florentino figured in a vehicular mishap along the National Highway, Barangay Aplaya, Digos City, Davao del Sur leaving four (4) persons dead and three (3) other injured. One of the casualties in the vehicular accident is Mary Ann Basoy, the daughter of herein petitioner.

Criminal Case No. 12724-98 was thereafter filed with the Municipal Trial Court (MTC), Digos City, Davao del Sur charging the driver of the bus (Ramillano) with reckless imprudence resulting in multiple homicide, serious physical injuries and damage to property. Petitioner was one of the private complainants in the criminal case.

While the criminal case was pending, petitioner filed a separate claim for damages against the driver of the passenger bus (Ramillano) before the Regional Trial Court (RTC), Branch 34 Panabo City, Davao del Norte on 22 October 1998 docketed as Civil Case No. 98-59 entitled "*Nila Basoy v. Cresencio Ramillano*". Ramillano's employer Weena Express Inc. or Bernardo Valdevieso were not impleaded as a defendant in that action.

After trial in Civil Case No. 98-59, or on October 20, 1999, the respondent Judge issued a Decision in favor of petitioner, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Cresencio Ramillano, ordering and directing the defendant to pay the plaintiff as follows:

1. Funeral expenses of Php100,000.00;
2. Moral damages in the amount of Php150,000.00;
3. Exemplary damages in the sum of Php100,000.00;
4. Compensatory damages of Php1,000,000.00;
5. Litigation expenses of Php10,000.00; and
6. Appearance fees of Php2,000.00 per appearance.

Costs against the defendant.

SO ORDERED.<sup>[4]</sup>

Private respondent Ramillano appealed the above RTC Decision before Us. However, on January 17, 2008, the former Twenty Second Division of this Court affirmed *in toto* the October 20, 1999 Decision of the RTC, Branch 34, Panabo City.<sup>[5]</sup>

Almost 10 years after Civil Case No. 98-59 was decided, or on July 28, 2009, the MTC, Digos City, Davao del Sur issued a Decision in Criminal Case No. 12274-98 finding Ramillano criminally liable for the crime charged and sentencing the latter to an indeterminate prison term of four (4) months and one (1) day of *arresto mayor*, to four (4) years and two (2) months of *prision correccional* as maximum. An award for damages was made to some of the victims but not to the heirs of Mary Ann Basoy for the following reason:

As regards the claims (sic) Mrs. Patrona Arellano (the owner of the ill-fated motorcycle) and the heirs of Mary Ann Basoy (one of the fatalities), no award is given to them in this case considering that their claims had been the subject of separate civil action.<sup>[6]</sup>

On July 9, 2011, a writ of execution was issued by the RTC, Branch 34, Panabo City to enforce its October 20, 1999 Decision against Ramillano. However, per sheriff's return of writ dated September 21, 2011, the latter reported to the court that the driver (Ramillano) had no means to pay the judgment obligation.<sup>[7]</sup>

Consequently, on November 3, 2011, petitioner filed in Civil Case No. 98-59 a motion to enforce subsidiary liability on the employer of Ramillano, the Weena Bus Lines and/or Bernardo Valdevieso claiming that Ramillano has been convicted in Criminal Case No. 12724-98 and the bus company or its owner is subsidiarily liable as employer, stating that -

2. The civil aspect of this case in the form of complaint for damages arising out of the incident was the above-entitled case Civil Case No. 98-59 where the accused was made to pay damages.<sup>[8]</sup>

On February 6, 2012, the respondent Judge issued the first assailed Order denying petitioner's motion for lack of merit. According to public respondent the subsidiary liability of the employer for the felonious act committed by their employee in the discharge of his duties can be enforced only in the criminal case where the latter is convicted for the criminal offense. He added that while the law allowed the offended

party to separately prosecute the civil action arising from the offense charged it does not mean that subsidiary liability arising from the criminal case can be enforced in the separate civil action.<sup>[9]</sup>

In her motion for reconsideration,<sup>[10]</sup> petitioner avers that the ex delicto civil liability of Ramillano may be enforced (a) in the criminal action or (b) may be proven by way of a separate civil action, as in this case. Petitioner argues that the subsidiary liability of Ramillano's employer can be adjudged in the Civil Case No. 98-59 since no award of civil liability was made in the criminal case in favor of the heirs of Mary Ann Basoy.

On April 13, 2012, the public respondent issued the second assailed Order denying petitioner's motion for reconsideration, giving as reasons:

... Plaintiff has confused the cause of action pleaded herein as based in culpa criminal when in reality it is predicated on culpa aquiliana. As mother of the victim, plaintiff has two options to recover damages arising from the death of her daughter of the vehicular accident: firstly, to institute a criminal case against defendant-driver pursuing in the same case her right to recover damages; and secondly, to file a separate civil action to recover the said damages.

In the first instance, the criminal case can generally be instituted only against the defendant-driver. However, once the latter is convicted and found civilly liable to the plaintiff, such liability may be imposed against his employer if he is insolvent. The basis for this is the subsidiary liability of the employer for the acts of his employees provided for under Articles 102 & 103 of the Revised Penal Code.

On the other hand, if plaintiff prefers to enforce the civil liability separately as what she did by filing the instant case, she can proceed against the employers of defendant-driver by impleading them as party defendants since their liability under Article 2180 of the Civil Code is direct, and not merely subsidiary, but subject however to the defense on their part that they exercised due diligence in the selection and supervision of their employee.<sup>[11]</sup>

Petitioner disagreed. Hence, this petition for certiorari.

### ***Issues:***

Petitioner assigns these errors:

- I. The respondent Judge erred and committed grave abuse of discretion in refusing to enforce the subsidiary liability of the employer under Article 103 of the Revised Penal Code in Civil Case No. 98-59; and
- II. The respondent Judge erred and committed grave abuse of discretion when it ruled that the complaint in Civil Case No. 98-59 arises from *Culpa Aquiliana* when it is clearly a civil complaint arising from *Culpa Criminal*.<sup>[12]</sup>

Petitioner insists that the award of damages in her favor in Civil Case No. 98-59 is one to enforce the civil liability arising from the crime (*ex delicto*). She argues that since private respondent Ramillano had been convicted in Criminal Case No. 12274-98 and was assessed civil liability in Civil Case No. 98-59, it would now be a ministerial course for respondent Judge to enforce the subsidiarily liability of the employer under Article 103 of the Revised Penal Code in view of Ramillano's insolvency by executing the judgment in Civil Case No. 98-59 against the latter's employer.

Private respondent Weena Bus Lines on the other hand maintains that petitioner cannot enforce their subsidiary liability as employer in the Civil Case No. 98-59 because they were not impleaded as party-defendant in the said case. They maintain that the subsidiary liability of the employer under Article 103 of the Revised Penal Code can only be enforced in the criminal case and not in the civil case.

### ***The Court's Ruling:***

This Court finds no merit in this Petition.

To begin with, it is settled that obligations arise solely from law, contract, *quasi-contract*, acts or omissions punished by law (crime) and *quasi-delict*.<sup>[13]</sup> Corollarily, a single delictual act or omission may give rise to two separate and distinct civil liabilities on the part of the offender, *i.e.*, 1) civil liability *ex delicto*; and 2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as felony (*e.g.*, *culpa contractual* or obligations arising from law; the intentional torts; and *culpa aquiliana*; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action such as that under Article 33 of the Civil Code.<sup>[14]</sup> Either of these two possible liabilities may be enforced against the offender subject only to the bar against double recovery.

Stated otherwise, victims of criminal negligence or their heirs have a choice between an action to enforce the civil liability arising from *culpa criminal* under Article 100 of the Revised Penal Code, and an action for *quasi-delict* (*culpa aquiliana*) under Articles 2176 to 2194 of the Civil Code or by filing an independent civil action.<sup>[15]</sup> Once the choice is made, the injured party can not avail himself of any other remedy because he may not recover damages twice for the same negligent act or omission of the accused. This is the rule against double recovery.<sup>[16]</sup> If he chooses an action for *quasi-delict*, he may hold an employer directly liable for the negligent act of the employee subject, however, to the employer's defense of exercise of diligence of a good father of the family.<sup>[17]</sup> On the other hand, should the injured party choose to prosecute his action under Article 100 of the Penal Code and demand indemnity under Article 104 of the same Code, he can hold the employer subsidiarily liable upon prior conviction of the employee and who turns out to be incapable of satisfying the civil liability imposed on him.<sup>[18]</sup>

As a rule, the civil liability arising *ex delicto* is deemed instituted with the criminal action. This is primarily for expediency and economy, particularly in cases involving victims who may not have the resources to pursue a separate civil action and be engaged in two separate trials. Thus, Section 3, Rule 111 of the Rules of Court, which governs the rules on institution of criminal and civil actions, provides: