

## FIRST DIVISION

[ G.R. No. 173870, April 25, 2012 ]

**OSCAR DEL CARMEN, JR., PETITIONER, VS. GERONIMO BACOY, GUARDIAN AND REPRESENTING THE CHILDREN, NAMELY: MARY MARJORIE B. MONSALUD, ERIC B. MONSALUD, METZIE ANN B. MONSALUD, KAREEN B. MONSALUD, LEONARDO B. MONSALUD, JR., AND CRISTINA B. MONSALUD, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

In this Petition for Review on *Certiorari*,<sup>[1]</sup> the registered owner of a motor vehicle challenges the Decision<sup>[2]</sup> dated July 11, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67764 which held him liable for damages to the heirs of the victims who were run over by the said vehicle.

#### ***Factual Antecedents***

At dawn on New Year's Day of 1993, Emilia Bacoy Monsalud (Emilia), along with her spouse Leonardo Monsalud, Sr. and their daughter Glenda Monsalud, were on their way home from a Christmas party they attended in *Poblacion*, Sominot, Zamboanga Del Sur. Upon reaching *Purok* Paglaom in Sominot, they were run over by a Fuso passenger jeep bearing plate number UV-PEK-600 that was being driven by Allan Maglasang (Allan). The jeep was registered in the name of petitioner Oscar del Carmen, Jr. (Oscar Jr.) and used as a public utility vehicle plying the Molave, Zamboanga del Sur to Sominot, Zamboanga del Sur and vice versa route.

Because of the unfortunate incident, Criminal Case No. 93-10347<sup>[3]</sup> for Reckless Imprudence Resulting in Multiple Homicide was filed against Allan before the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23. In a Decision dated March 13, 1997, said court declared Allan guilty beyond reasonable doubt of the crime charged.<sup>[4]</sup>

During the pendency of said criminal case, Emilia's father, Geronimo Bacoy (Geronimo), in behalf of the six minor children<sup>[5]</sup> of the Monsaluds, filed Civil Case No. 96-20219,<sup>[6]</sup> an independent civil action for damages based on *culpa aquiliana*. Aside from Allan, also impleaded therein were his alleged employers, namely, the spouses Oscar del Carmen, Sr. (Oscar Sr.) and Norma del Carmen (Spouses del Carmen) and the registered owner of the jeep, their son Oscar Jr. Geronimo prayed for the reimbursement of funeral and burial expenses, as well as the award of attorney's fees, moral and exemplary damages resulting from the death of the three victims, and loss of net income earnings of Emilia who was employed as a public school teacher at the time of her death.<sup>[7]</sup>

Defendants refused to assume civil liability for the victims' deaths. Oscar Sr. averred that the Monsaluds have no cause of action against them because he and his wife do not own the jeep and that they were never the employers of Allan.<sup>[8]</sup> For his part, Oscar Jr. claimed to be a victim himself. He alleged that Allan and his friends<sup>[9]</sup> stole his jeep while it was parked beside his driver's rented house to take it for a joyride. Both he and a vehicle mechanic testified that the subject jeep can easily be started by mere pushing *sans* the ignition key. The vehicle's engine shall then run but without any headlights on.<sup>[10]</sup> And implying that this was the manner by which the vehicle was illegally taken, Oscar Jr. submitted as part of his documentary evidence the statements<sup>[11]</sup> of Jemar Alarcon (Jemar) and Benjamin Andujar (Benjamin). The two, who were with Allan in the jeep at the time of the accident, declared before the investigating officer that during said time, the vehicle's headlights were off. Because of this allegation, Oscar Jr. even filed before the same trial court a carjacking case against Allan and his companions docketed as Criminal Case No. 93-10380.<sup>[12]</sup> The case was, however, dismissed for insufficiency of evidence.<sup>[13]</sup>

Oscar Jr. clarified that Allan was his jeep conductor and that it was the latter's brother, Rodrigo Maglasang (Rodrigo), who was employed as the driver.<sup>[14]</sup> In any event, Allan's employment as conductor was already severed before the mishap occurred on January 1, 1993 since he served as such conductor only from the first week of December until December 14, 1992.<sup>[15]</sup> In support of this, Oscar Jr. presented as witnesses Faustino Sismundo (Faustino) and Cresencio "Junior" Baobao (Cresencio). Faustino, a resident of Molave, testified that when he boarded the jeep heading to Sominot on December 31, 1992, it was Cresencio who was the conductor. He also believed that Cresencio started to work as such at around December 15 or 16, 1992.<sup>[16]</sup> Cresencio, for his part, testified that he worked as Oscar Jr.'s conductor from December 15, 1992 to January 1, 1993 and that Rodrigo was his driver.<sup>[17]</sup> He stated that upon learning that the jeep figured in an accident, he never bothered to verify the news. Instead, he went to Midsalip to work there as a conductor for his brother's vehicle, thereby terminating his employment with Oscar Jr.<sup>[18]</sup>

Oscar Jr. likewise testified that it was routinary that after a day's trip, the jeep would be parked beside Rodrigo's rented house<sup>[19]</sup> for the next early-morning operation.

Geronimo, on the other hand, averred that Allan was still Oscar Jr.'s employee subsequent to December 14, 1992. To prove this, he presented as witnesses Saturnino Jumawan (Saturnino) and Jose Navarro (Jose). Saturnino testified that he would pay his fare to Allan every time he would board the jeep in going to Molave and that the last time he rode the subject vehicle was on December 23, 1992. He also claimed that immediately before January 1, 1993, Rodrigo and Allan used to park the jeep at the yard of his house.<sup>[20]</sup> Jose likewise attested that Allan was still the jeep conductor during the said period as he had ridden the jeep many times in mid-December of 1992.<sup>[21]</sup>

### ***Ruling of the Regional Trial Court***

In its Decision<sup>[22]</sup> dated April 17, 2000, the RTC exculpated the spouses del Carmen

from civil liability for insufficiency of evidence. However, their son Oscar Jr. was held civilly liable in a subsidiary capacity. The RTC anchored its ruling primarily on the principle of *res ipsa loquitur, i.e.*, that a presumption of negligence on the part of a defendant may be inferred if the thing that caused an injury is shown to be under his management and that in the ordinary course of things, the accident would not have happened had there been an exercise of care. Said court ratiocinated that Oscar Jr., as the registered owner of the jeep, managed and controlled the same through his driver Rodrigo, in whose house the jeep was usually parked. Since both Oscar Jr. and Rodrigo were well aware that the jeep could easily be started by a mere push even without the ignition key, they should have taken the necessary precaution to prevent the vehicle from being used by unauthorized persons like Allan. The RTC thus concluded that such lack of proper precaution, due care and foresight constitute negligence making the registered owner of the vehicle civilly liable for the damage caused by the same.

The RTC disposed of the case as follows:

Wherefore, judgment is hereby entered in favor of the plaintiffs and against the defendants Allan Maglasang and Oscar del Carmen, Jr. ordering –

1. Defendant ALLAN MAGLASANG to pay the plaintiffs, and in case of insolvency, for defendant OSCAR DEL CARMEN, JR., to pay the plaintiffs, the following sums:
  - a. P73,112.00 for their funeral and burial expenses;
  - b. P1,000,000.00 moral damages for the death of the late Emilia Monsalud;
  - c. P250,000.00 moral damages for the death of the late Leonardo Monsalud, Sr.;
  - d. P250,000.00 moral damages for the death of the late Glenda Monsalud;
  - e. P40, 000.00, for exemplary damages;
  - f. P20,000.00 attorney's fees; and
  - g. The cost of this proceedings.
2. The dismissal of the complaint as against the spouses OSCAR DEL CARMEN SR. and NORMA DEL CARMEN.

SO ORDERED.<sup>[23]</sup>

Oscar Jr. moved for reconsideration<sup>[24]</sup> contending that the provision on vicarious liability of the employer under Article 2180 of the Civil Code<sup>[25]</sup> requires the existence of employer-employee relationship and that the employee was acting within the scope of his employment when the tort occurred. He stressed that even assuming that Allan was his employee, he was hired not as a driver but as a conductor. Hence, Allan acted beyond the scope of his employment when he drove the jeep.

Oscar Jr. also stressed that the fact that the jeep was running without its headlights on at the time of the accident indubitably shows that the same was stolen. He further alleged that the jeep could not have been taken by only one person. As Rodrigo declared in Criminal Case No. 93-10380 (carnapping case), based on his experience, the jeep cannot be pushed by only one person but by at least five people in order for it to start. This was due to the vehicle's mass and the deep canal which separates the parking area from the curved road that was obstructed by a house.<sup>[26]</sup>

Setting aside its earlier decision, the lower court in its Order<sup>[27]</sup> dated June 21, 2000 granted the Motion for Reconsideration and absolved Oscar Jr. from civil liability. It cited Article 103 of the Revised Penal Code which provides that for an employer to be subsidiarily liable for the criminal acts of his employee, the latter should have committed the same in the discharge of his duties. The court agreed with Oscar Jr. that this condition is wanting in Allan's case as he was not acting in the discharge of his duties as a conductor when he drove the jeep.

The court also declared the doctrine of *res ipsa loquitur* inapplicable since the property owner cannot be made responsible for the damages caused by his property by reason of the criminal acts of another. It then adjudged that only Allan should bear the consequences of his criminal acts. Thus:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION is granted, and defendant OSCAR DEL CARMEN JR. is hereby absolved from all civil liability arising from the felonious acts of convicted accused ALLAN MAGLASANG.

IT IS SO ORDERED.<sup>[28]</sup>

Geronimo appealed.

### ***Ruling of the Court of Appeals***

In its July 11, 2006 Decision,<sup>[29]</sup> the CA granted the appeal.

In resolving the case, the CA first determined the preliminary issue of whether there was an employer-employee relationship between Oscar Jr. and Allan at the time of the accident. It ruled in the affirmative and gave more credence to the testimonies of Geronimo's witnesses than to those of Oscar Jr.'s witnesses, Faustino and Cresencio. The CA ratiocinated that unlike the witness presented by Geronimo, Faustino never resided in *Poblacion* and thus has limited knowledge of the place. His testimony was also unreliable considering that he only rode the subject jeep twice<sup>[30]</sup> during the last two weeks of December 1992. As regards Cresencio's testimony, the appellate court found it puzzling why he appeared to have acted uninterested upon learning that the jeep was the subject of an accident when it was his bread and butter. Said court likewise considered questionable Oscar Jr.'s asseveration that Cresencio replaced Allan as conductor when Cresencio testified that he replaced a certain Sumagang Jr.<sup>[31]</sup>

With regard to the main issue, the CA adjudged Oscar Jr. liable to the heirs of the victims based on the principle that the registered owner of a vehicle is directly and primarily responsible for the injuries or death of third parties caused by the operation of such vehicle. It disbelieved Oscar Jr.'s defense that the jeep was stolen not only because the carnapping case filed against Allan and his companions was dismissed but also because, given the circumstances, Oscar Jr. is deemed to have given Allan the implied permission to use the subject vehicle. To support its conclusion, the CA cited the following circumstances: siblings Rodrigo and Allan were both employees assigned to the said jeep; after a day's work, said vehicle would be parked just beside Rodrigo's house where Allan also lived; the jeep could easily be started even without the use of an ignition key; the said parking area was not fenced or secured to prevent the unauthorized use of the vehicle which can be started even without the ignition key.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The assailed Order dated 21 June 2000 of the Regional Trial Court (Branch 23), Molave, Zamboanga del Sur, in Civil Case No. 96-20,219 is SET ASIDE and a new one is hereby entered. OSCAR DEL CARMEN, Jr. and ALLAN MAGLASANG are held primarily liable, jointly and severally, to pay plaintiffs-appellants:

1. Civil indemnity for the death of Emilia Bacoy Monsalud, Leonardo Monsalud Sr., and Glenda Monsalud in the amount of Fifty thousand pesos (P50,000.00) each or for the total amount of One hundred fifty thousand pesos (P150,000.00);
2. Temperate damages in the amount of Twenty-five Thousand Pesos (P25,000.00) each for the death of Emilia Monsalud, Leonardo Monsalud Sr., and Glenda Monsalud (collectively the Monsaluds) or for the total amount of Seventy-five thousand pesos (P75,000.00);
3. Moral damages in the amount of Fifty Thousand Pesos (P50,000.00) each for the death of the Monsaluds or for a total amount of One Hundred Fifty Thousand Pesos (P150,000.00);
4. Exemplary damages of Forty Thousand Pesos (P40,000.00).

No pronouncement as to costs.

SO ORDERED. [32]

### **Issues**

As a result of the adverse judgment, Oscar Jr. filed this Petition for Review on *Certiorari* alleging that the CA erred in: