592 Phil. 424

# THIRD DIVISION

# [ G.R. No. 163609, November 27, 2008 ]

## SPS. BUENAVENTURA JAYME AND ROSARIO JAYME, PETITIONERS, VS. RODRIGO APOSTOL, FIDEL LOZANO, ERNESTO SIMBULAN, MAYOR FERNANDO Q. MIGUEL, MUNICIPALITY OF KORONADAL (NOW CITY OF KORONADAL), PROVINCE OF SOUTH COTABATO, REPRESENTED BY THE MUNICIPAL TREASURER AND/OR MUNICIPAL MAYOR FERNANDO Q. MIGUEL, AND THE FIRST INTEGRATED BONDING AND INSURANCE COMPANY, INC., RESPONDENTS.

## D E C I S I O N

**REYES, R.T., J.:**

MAY a municipal mayor be held solidarily liable for the negligent acts of the driver assigned to him, which resulted in the death of a minor pedestrian?

Challenged in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals (CA) which reversed and set aside the decision of the Regional Trial Court (RTC), Polomolok, Cotabato City, Branch 39, insofar as defendant Mayor Fernando Q. Miguel is concerned. The CA absolved Mayor Miguel from any liability since it was not he, but the Municipality of Koronadal, that was the employer of the negligent driver.

### The Facts

On February 5, 1989, Mayor Miguel of Koronadal, South Cotabato was on board the Isuzu pick-up truck driven by Fidel Lozano, an employee of the Municipality of Koronadal.[2] The pick-up truck was registered under the name of Rodrigo Apostol, but it was then in the possession of Ernesto Simbulan.[3] Lozano borrowed the pick-up truck from Simbulan to bring Miguel to Buayan Airport at General Santos City to catch his Manila flight.[4]

The pick-up truck accidentally hit Marvin C. Jayme, a minor, who was then crossing the National Highway in Poblacion, Polomolok, South Cotabato.[5] The intensity of the collision sent Marvin some fifty (50) meters away from the point of impact, a clear indication that Lozano was driving at a very high speed at the time of the accident.[6]

Marvin sustained severe head injuries with subdural hematoma and diffused cerebral contusion.[7] He was initially treated at the Howard Hubbard Memorial Hospital.[8] Due to the seriousness of his injuries, he was airlifted to the Ricardo Limso Medical Center in Davao City for more intensive treatment.[9] Despite medical attention, Marvin expired six (6) days after the accident.[10]

Petitioners spouses Buenaventura and Rosario Jayme, the parents of Marvin, filed a complaint for damages with the RTC against respondents.[11] In their complaint, they prayed that all respondents be held solidarily liable for their loss. They pointed out that that proximate cause of Marvin's death was Lozano's negligent and reckless operation of the vehicle. They prayed for actual, moral, and exemplary damages, attorney's fees, and litigation expenses.

In their respective Answers, all respondents denied liability for Marvin's death. Apostol and Simbulan averred that Lozano took the pick-up truck without their consent. Likewise, Miguel and Lozano pointed out that Marvin's sudden sprint across the highway made it impossible to avoid the accident. Yet, Miguel denied being on board the vehicle when it hit Marvin. The Municipality of Koronadal adopted the answer of Lozano and Miguel. As for First Integrated Bonding and Insurance Company, Inc., the vehicle insurer, it insisted that its liability is contributory and is only conditioned on the right of the insured. Since the insured did not file a claim within the prescribed period, any cause of action against it had prescribed.

**RTC Disposition**

On January 25, 1999, the RTC rendered judgment in favor of spouses Jayme, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the defendant Municipality of Koronadal cannot be held liable for the damages incurred by other defendant (*sic*) being an agency of the State performing a (*sic*) governmental functions. The same with defendant Hermogenes Simbulan, not being the owner of the subject vehicle, he is absolved of any liability. The complaint against defendant First Integrated Bonding Insurance Company, Inc. is hereby ordered dismissed there being no cause of action against said insurance company.
>
> However, defendants Fidel Lozano, Rodrigo Apostol, and Mayor Fernando Miguel of Koronadal, South Cotabato, are hereby ordered jointly and severally to pay the plaintiff (*sic*) the following sums:
>
> 1. One Hundred Seventy Three Thousand One Hundred One and Forty Centavos (P173,101.40) Pesos as actual damages with legal interest of 12% per annum computed from February 11, 1989 until fully paid;
> 2. Fifty Thousand (P50,000.00) Pesos as moral damages;
> 3. Twenty Thousand (P20,000.00) Pesos as exemplary damages;
> 4. Twenty Thousand (P20,000.00) Pesos as Attorney's fees;
> 5. Fifty Thousand (P50,000.00) Pesos for the death of Marvin Jayme;
> 6. Three Thousand (P3,000.00) as litigation expenses; and
> 7. To pay the cost of this suit.
>
> SO ORDERED.[12]

Dissatisfied with the RTC ruling, Mayor Miguel interposed an appeal to the CA.

**CA Disposition**

In his appeal, Mayor Miguel contended that the RTC erred in ruling that he was Lozano's employer and, hence, solidarily liable for the latter's negligent act. Records showed that the Municipality of Koronadal was the driver's true and lawful employer. Mayor Miguel also denied that he did not exercise due care and diligence in the supervision of Lozano. The incident, although unfortunate, was unexpected and cannot be attributed to him.

On October 22, 2003, the CA granted the appeal, disposing as follows:

> WHEREFORE, the Decision appealed from is REVERSED and SET ASIDE, insofar as defendant-appellant Mayor Fernando Q. Miguel is concerned, and the complaint against him is DISMISSED.
>
> IT IS SO ORDERED.[13]

The CA held that Mayor Miguel should not be held liable for damages for the death of Marvin Jayme. Said the appellate court:

> Moreover, plaintiffs-appellees admitted that Mayor Miguel was not the employer of Lozano. Thus, paragraph 9 of the complaint alleged that the **Municipality of Koronadal was the employer of both Mayor Miguel and Lozano**. Not being the employer of Lozano, Mayor Miguel could not thus be held liable for the damages caused by the former. **Mayor Miguel was a mere passenger in the Isuzu pick-up at the time of the accident**.[14] (Emphasis supplied)

The CA also reiterated the settled rule that it is the registered owner of a vehicle who is jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries or death sustained in the operation of the vehicle.

**Issues**

The spouses Jayme have resorted to the present recourse and assign to the CA the following errors:

I.

> THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT MAYOR FERNANDO MIGUEL CANNOT BE HELD LIABLE FOR THE DEATH OF MARVIN JAYME WHICH CONCLUSION IS CONTRARY TO LAW AND THE SETTLED PRONOUNCEMENTS OF THIS HONORABLE TRIBUNAL;

II.

> THE FINDINGS OF FACTS OF THE HONORABLE COURT OF APPEALS ARE CONTRARY TO THE FINDINGS OF THE TRIAL COURT AND ARE CONTRADICTED BY THE EVIDENCE ON RECORD; MOREOVER, THE CONCLUSIONS DRAWN BY THE HONORABLE COURT OF APPEALS ARE ALL BASED ON CONJECTURES AND SURMISES AND AGAINST ACCEPTED COURSE OF JUDICIAL PROCEEDINGS WHICH URGENTLY CALL FOR AN EXERCISE OF THIS HONORABLE COURT'S SUPERVISION.[15]

## Our Ruling

**The doctrine of vicarious liability or imputed liability finds no application in the present case**.

Spouses Jayme contend, *inter alia*, that vicarious liability attaches to Mayor Miguel. He was not a mere passenger, but instead one who had direct control and supervision over Lozano during the time of the accident. According to petitioners, the element of direct control is not negated by the fact that Lozano's employer was the Municipality of Koronadal. Mayor Miguel, being Lozano's superior, still had control over the manner the vehicle was operated.

Article 2180[16] of the Civil Code provides that a person is not only liable for one's own quasi-delictual acts, but also for those persons for whom one is responsible for. This liability is popularly known as vicarious or imputed liability. To sustain claims against employers for the acts of their employees, the following requisites must be established: (1) That the employee was chosen by the employer personally or through another; (2) That the service to be rendered in accordance with orders which the employer has the authority to give at all times; and (3) That the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.[17]

Significantly, to make the employee liable under paragraphs 5 and 6 of Article 2180, it must be established that the injurious or tortuous act was committed at the time the employee was performing his functions.[18]

Furthermore, the employer-employee relationship cannot be assumed. It is incumbent upon the plaintiff to prove the relationship by preponderant evidence. In *Belen v. Belen*,[19] this Court ruled that it was enough for defendant to deny an alleged employment relationship. The defendant is under no obligation to prove the negative averment. This Court said:

> It is an old and well-settled rule of the courts that the burden of proving the action is upon the plaintiff, and that if he fails satisfactorily to show the facts upon which he bases his claim, the defendant is under no obligation to prove his exceptions. This rue is in harmony with the provisions of Section 297 of the Code of Civil Procedure holding that each party must prove his own affirmative allegations, etc.[20]

In resolving the present controversy, it is imperative to find out if Mayor Miguel is, indeed, the employer of Lozano and therefore liable for the negligent acts of the latter. To determine the existence of an employment relationship, We rely on the four-fold test. This involves: (1) the employer's power of selection; (2) payment of wages or other remuneration; (3) the employer's right to control the method of doing the work; and (4) the employer's right of suspension or dismissal.[21]

Applying the foregoing test, the CA correctly held that it was the Municipality of Koronadal which was the lawful employer of Lozano at the time of the accident. It is uncontested that Lozano was employed as a driver by the municipality. That he was subsequently assigned to Mayor Miguel during the time of the accident is of no moment. This Court has, on several occasions, held that an employer-employee

relationship still exists even if the employee was loaned by the employer to another person or entity because control over the employee subsists.[22] In the case under review, the Municipality of Koronadal remains to be Lozano's employer notwithstanding Lozano's assignment to Mayor Miguel.

Spouses Jayme argued that Mayor Miguel had at least supervision and control over Lozano and how the latter operated or drove the Isuzu pick-up during the time of the accident. They, however, failed to buttress this claim.

Even assuming *arguendo* that Mayor Miguel had authority to give instructions or directions to Lozano, he still can not be held liable. In *Benson v. Sorrell*,[23] the New England Supreme Court ruled that mere giving of directions to the driver does not establish that the passenger has control over the vehicle. Neither does it render one the employer of the driver. This Court, in *Soliman, Jr. v. Tuazon*,[24] ruled in a similar vein, to wit:

> x x x The fact that a client company may give instructions or directions to the security guards assigned to it, **does not**, by itself, **render the client responsible as an employer** of the security guards concerned and liable for their wrongful acts and omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency. x x x[25] (Emphasis supplied)

Significantly, no negligence may be imputed against a fellow employee although the person may have the right to control the manner of the vehicle's operation.[26] In the absence of an employer-employee relationship establishing vicarious liability, the driver's negligence should not be attributed to a fellow employee who only happens to be an occupant of the vehicle.[27] Whatever right of control the occupant may have over the driver is not sufficient by itself to justify an application of the doctrine of vicarious liability. *Handley v. Lombardi*[28] is instructive on this exception to the rule on vicarious liability:

> Plaintiff was not the master or principal of the driver of the truck, but only an intermediate and superior employee or agent. This being so, the doctrine of *respondeat superior or qui facit per alium* is not properly applicable to him. His power to direct and control the driver was not as master, but only by virtue of the fact that they were both employed by Kruse, and the further fact that as Kruse's agent he was delegated Kruse's authority over the driver. x x x
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> In the case of actionable negligence, the rule is well settled both in this state and elsewhere that the negligence of a subordinate employee or subagent is not to be imputed to a superior employee or agent, but only to the master or principal. (*Hilton v. Oliver*, 204 Cal. 535 [61 A. L. R. 297, 269 Pac. 425]; *Guild v. Brown*, 115 Cal. App. 374 [1 Pac. (2d) 528]; *Ellis v. Southern Ry. Co.*, 72 S. C. 464 [2 L. R. A. (N. S.) 378, 52 S. E. 228]; *Thurman v. Pittsburg & M. Copper Co.*, 41 Mont. 141 [108 Pac. 588]; 2 Cor. Jur., p. 829; and see the elaborate note in 61 A. L. R. 277, and particularly that part commencing at p. 290.) We can see no logical