# SPECIAL TWENTY-FIRST DIVISION

# [ CA-G.R. CV NO. 02244-MIN, February 28, 2014 ]

## EDUARDO B. VILORIA, REPRESENTED BY HIS SON, MICHAEL JAY S. VILORIA, PLAINTIFF-APPELLANT, VS. ALVIN JIMENEZ AND ROLANDO JIMENEZ, SR., DEFENDANTS-APPELLANTS.

## DECISION

**BORJA, J.:**

APPEAL from the March 14, 2010 Decision[1] of the Regional Trial Court (Branch 5), 12th Judicial Region, Iligan City, dismissing Civil Case No. 6888, an action for "Damages".

*The Facts of the Case*

On May 2, 2006, plaintiff Eduardo Viloria, represented by his son, Michael Jay Viloria, filed the complaint[2] in the aforementioned case against defendants Alvin Jimenez and Rolando Jimenez Sr., alleging as follows –

Sometime in August 2003, Alvin Jimenez approached Michael Jay Viloria to borrow a Mitsubishi Micro-bus L-300 owned by his father, plaintiff Eduardo Viloria. Alvin planned to use the van on September 15, 2003 and proposed to rent it for P1,000.00 for one day use. Michael, acceding "out of pity", turned over the van to Michael Jay on September 14, 2003 at a car shop. Alvin paid only P700.00. On the same day, at around 9:00 o'clock in the evening, the van, driven by Alvin, figured in an accident when it bumped a Yamaha Motorcycle bearing plate number KJ-8187 driven by Rafael Islet, with passengers Allan Sarting and Ramel Sanico, at a curve of the Barinaut Highway, Iligan City. Allan and Ramel sustained physical injuries; the van sustained serious damage. The investigation by SPO1 Roosevelt M. Cabarteja disclosed that Alvin was under the influence of intoxicating liquor at the time of the accident.

As a consequence, Allan and Ramel were both confined and treated at the Mindanao Sanitarium Hospital; Eduardo Villoria, the plaintiff, paid the hospital bills in the amount of P3,146.00. The van, which fell off a cliff, was extricated by two cranes from the Celica Auto-repair shop whose services Eduardo engaged and whom he paid P3,000.00 as towing fee. Damage to the van, which was parked at the Celica Auto-repair shop, was estimated at P296,854.00. The plaintiff asked for moral damages in the amount of P100,000.00, attorney's fees in the amount of P30,000.00, appearance fees at P1,500.00 per appearance, and litigation expenses.

Michael clarified that defendant Rolando Jimenez, Sr. was impleaded as the father of "Alvin who was then nineteen years old at the time of the mishap and was still living with his parents and dependent for support and subsistence."

In their answer,[3] the defendants countered that –

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3. They qualify the allegations in paragraph 4 because as of September 2003, defendant Alvin Jimenez was of legal age and was living separately and independently from his parents; he was not dependent upon them for support, whatsoever. They deny the allegations in paragraph 5 for want of basis in fact and in law;

4. They deny the allegations in paragraphs 6 and 7, the truth being, that plaintiff's van was a vehicle for hire, operated as "*colorum*"[4]; the transaction entered into between him and defendant Alvin was personal… and for a fixed rental of Php1,000.00 exclusive of fuel and driver, while co-defendant Rolando Jimenez, Sr. had no participation thereon whatsoever;

5. They qualify the allegations in paragraph 7 in that on September 15, 2003, defendant Alvin hired said van for Php1,000.00 and transacted alone with plaintiff Michael at the car shop near Philam Building. After the consummation of the transaction, plaintiff invited Alvin to a drinking spree at Darren's Bar, along Permites Road, Barangay San Miguel, Iligan City. At first, Alvin declined the invitation but Michael insisted and would not allow him to leave with the van;

6. They qualify the allegations in paragraph 8 in that while Alvin was driving the van by himself, on his way to Barra, Opol, Misamis Oriental and while following the national highway, he was caught by surprise by the presence of a motorcycle ahead without lights on it. However, by that time the van was already very close to the motorcycle that hitting it was inevitable. He instinctively swerved the van to the left but due to its proximity to the motorcycle, its right side mirror hit the motorcycle, while he lost control of the wheel and the van crossed the road and slammed into the canal being dredged by the on-going widening project and thereafter it fell down. Allan Sarting's affidavit was maliciously obtained;

7. xxx [P]laintiff Michael is equally at fault and is *in pari delicto*;

8. They admit with qualification, the allegations in paragraph 11. Plaintiff was already paid with his insurance claims to, STANDARD INSURANCE COMPANY and the proceeds of such claims were already received by him;

9. They deny the allegations in paragraphs 12 and 13, because, regardless of the extent of the damage, plaintiff was already fully paid by his insurer, STANDARD INSURANCE COMPANY. To allow him to recover twice would be unjust enrichment. However, plaintiff undervalued his van to save from paying the right insurance premium. But in turn he was able to recover less than its actual insurance value. Besides, the plaintiff was operating the van FOR HIRE without authority from the LTFRB and without disclosing such fact to his insurer. As a consequence thereof, the proceeds of his insurance claims were proportionately reduced, that the plaintiff now intends to recover more from Alvin.Unfortunately, Alvin has no source of income, so co-defendant Rolando who is a total stranger is being unjustly and maliciously implicated as party defendant;

10. They deny the allegations in paragraph 14, xxx, plaintiff was acting in bad faith from the very beginning – he was operating the van for hire (as *colorum*);

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13. They deny the allegations in paragraphs 19 and 20 because as already stated, defendant Alvin already paid the hospital bills and medicines for Sarting and company. Besides, plaintiff was already paid by his insurer, by concealing the true facts and circumstances involving his claims, it is hereby suggested that the STANDARD INSURANCE COMPANY be summoned as well to enlighten the court.

DEFENSES AND OR MOTION TO DISMISS

14. Michael hereby re-pleads the foregoing allegations. In addition thereto, they believe the complaint should be dismissed because:

- the complaint states no cause of action, as plaintiff was illegally operating his L-300 van for hire without authority;

- co-defendant Rolando is a complete stranger, he had no participation in the transaction entered into by and between Michael and Alvin; he was not summoned to appear nor was he given the opportunity to participate in the barangay conciliation proceeding;

- Michael was already paid by the insurer, but despite thereof, he and the repair shop operator did not complete the repair of the van, apparently with intention of unjustly enriching himself;

- There is no civil liability because the incident was "accidental" and Alvin was not convicted of a crime, in fact the claims had already been settled;

- Plaintiff did not come to court with clean hands, as he is *in pari delicto* with Alvin.[5]

After the pre-trial on September 14, 2006,[6] trial ensued.

On May 14, 2010, the trial court rendered its decision decreeing as follows:

WHEREFORE, premises considered, the Court finds that the plaintiff failed to prove [*his*] case against the defendants due to lack of evidence. Likewise, herein defendants failed to prove their counterclaim. This case is dismissed.[7]

The trial court found that -

The plaintiff failed to prove that defendant's driving under the influence of liquor was the proximate cause of the mishap. xxx xxx xxx. No iota of evidence whatsoever was presented by the plaintiff to establish the act or omission constituting the fault or negligence of the defendant. There is no proof that Alvin drove the van in a reckless and wanton manner. In fact, this was not even alleged in the complaint. There is no allegation and no proof that the defendant's driving under the influence of liquor

> unbroken by any efficient intervening cause, produced the result complained of and without which, it would not have occurred.
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> Further, other than Allan Sarting, all of plaintiff's witnesses were not presented as eyewitness to the vehicular mishap. Allan on the other hand, only said that his companion Malot was hit by the side mirror, then the van must be beside them, but if the van bumped the motorcycle from behind, then it is unlikely for Malot to be struck by the side mirror. The plaintiff was not meticulous in their presentation of evidence – they failed to explain why the point of impact, indicated by the debris on the police sketch, appears to be in the middle or fast lane when a motorcycle, being the slower vehicle, is supposed to travel on the outside or slow lane. If Alvin was indeed at fault, why did the owner and riders of the motorcycle refuse to file charges against him? The truth is that there is no evidence adduced from which the court can draw conclusion for the purpose of determining the party at fault in this case.
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> It is a basic rule in evidence that each party must prove his affirmative allegations. The burden of proof lies with the party who asserts the affirmative of an issue.
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> As a final word, the extract of police blotter stated that the motorcycle was accidentally bumped and hit by a tailing L-300 van. Also, paragraph 8 of the Complaint makes the same allegation that it was accidental. The word accidental means it was fortuitous, strongly suggesting chance and the total absence of cause.[8]

Michael moved for the reconsideration[9] of the trial court's decision. But the trial court denied the motion on June 25, 2010.[10] Hence, this appeal, Michael assigning the following errors:

> 1. THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT PLAINTIFF FAILED TO PROVE THEIR CASE AGAINST DEFENDANTS DUE TO LACK OF EVIDENCE;
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> 2. THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THE PLAINTIFF IS BARRED BY ESTOPPEL AND BOUND BY THE ACTS OF HIS SON, MICHAEL VILORIA, WHO AT THE TIME ACTED AND REPRESENTED HIMSELF AS BEING DULY AUTHORIZED BY HIS FATHER, HENCE AN AGENT OF HIS FATHER.[11]

*The Ruling of this Court*

Appellant essentially argues that the trial court erred in dismissing the case for lack of merit when, he insists, he had established the elements of *quasi-delict. Viz* -

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> 3. the case at bar is clearly within the coverage of Article 2176, in relation to Article 2180 of the Civil Code provisions on *quasi-delicts* as all the elements thereof are present, to wit: (1) damages suffered by the plaintiff, (2) fault or negligence of the defendant or some other person

for whose act he must respond, and (3) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by plaintiff;

4. As to element number one, the fact that the subject motor vehicle owned and registered in the name of the plaintiff-appellant Eduardo Viloria was damaged was not disputed in the present case; in other words, plaintiff Eduardo Viloria was able to prove that he suffered damages because [*the L-300 van*] sustained damages; Second, the fact that defendant Alvin Jimenez at the time of the mishap was the driver of the [*L-300 van*] was not disputed in the present case. Thus, it necessarily follows as well that being the driver of the vehicle he is responsible for whatever actions or omissions he had done or not done in relation to his act of driving the subject motor vehicle;

5. further it is also worth noting that the damages caused to the [*L-300*] was because of the fact that it fell down an open construction canal wherein the same motor vehicle needed to be lifted by a crane to get it out of the canal;

6. Furthermore, it necessarily follows, that it is the way of the driving of said defendant Alvin which is the proximate cause of the damages sustained by the L-300 van;

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8. that being the driver of the L-300 van then it is the act of the defendant Alvin in bumping the motorcycle and swerving the same van to the left side of the highway causing it to fall in an open canal about six (6) feet high;

9. the van would not have sustained damages if it did not fall in the open canal about six (6) feet high; the same van did not also fall in the open canal should defendant Alvin had not swerve the van to the left and had it not bumped the motorcycle;

10. it therefore necessarily follows that it is the driving of the defendant Alvin Jimenez which caused the damages sustained by the van as it was him who was in full control of the subject motor vehicle at the time of the mishap.[12]

The Court finds that appellant – and the trial court – misconstrued the factual situation in the case to be one of quasi-delict or *culpa aquiliana*. The Civil Code recognizes three categories of negligence or *culpa*, namely, *culpa aquiliana* or civil negligence or tort or *quasi-delict*; *culpa criminal* or criminal negligence or that which results in the commission of a crime; and *culpa contractual*, or contractual negligence or that which results in a breach of contract.

The distinctions between the three kinds of negligence are well established. In *culpa aquiliana and culpa criminal,* negligence is direct, substantive and independent of any contractual obligation; there is no pre-existing contractual obligation. In *culpa contractual,* there *is* a pre-existing contractual obligation whether express or implied and the negligence is merely incidental to the performance of that obligation.[13] The most important distinction, in the context of the present case, is that in *culpa*