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FIRST DIVISION

[G.R. No. L-29803. September 14, 1979]

LEOPOLDO POBLETE, *plaintiff-appellant, vs.* **DONATO FABROS and GODOFREDO DE LA CRUZ,** *defendants-appellees.*

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-*CONTRACTUAL OBLIGATIONS*; *QUASI-DELICT*; PRESUMPTION OF NEGLIGENCE OF EMPLOYER ARISING FROM NEGLIGENCE OF EMPLOYEE CEASES IF EMPLOYER PROVES THAT IT OBSERVED ALL THE DILIGENCE OF A GOOD FATHER OF A FAMILY TO PREVENT DAMAGES.— It is such a firmly established principle, as to have virtually formed part of the law itself, that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is the presumed negligence in the selection and supervision of the employee. The theory of presumed negligence, in contrast with the American doctrine of *respondeat superior,* where the negligence of the employee is *conclusively* presumed to be the negligence of the employer, is clearly deducible from the last paragraph of Article 2180 of the Civil Code which provides that the responsibility therein mentioned shall cease if the employers prove that they observed all the diligence of a good father of a family to prevent damages (12 Manresa, 657; *Balica vs. Litonjua and Leynes,* 30 Phil. 624; *Cangco vs. Manila Railroad Co.*, 38 Phil. 768), as observed in the same cases just cited.

APPEARANCES OF COUNSEL

Nere C. Cordova for plaintiff-appellant.
F. L. Isidro for defendants-appellees.

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DECISION

DE CASTRO, *J.*:

This is an action for damages, arising from a vehicular accident, filed by the plaintiff Leopoldo Poblete as owner of the damaged taxicab, against the driver and owner of the allegedly offending vehicle, Donato Fabros and Godofredo de la Cruz, respectively.

After trial on the merits, and the case submitted for decision, the trial court, the Court of First Instance of Davao, Judge Vicente Cusi, Jr., presiding, dismissed the case on the ground that from the allegation of the complaint, the action is one to hold Donato Fabros, as the employer of the allegedly negligent driver, Godofredo de la Cruz, subsidiarily liable for the damage caused the plaintiff, and is, therefore, premature, there having been no criminal action filed against the driver who had died during the pendency of the case at bar, and, in effect, states no cause of action. A motion for reconsideration was filed to the order of dismissal, but to no avail. Hence, this appeal.

The question raised is whether on the basis of the allegation of the complaint, the action is one to enforce the subsidiary liability of the employer of the negligent driver as provided in Article 103 of the Revised Penal Code, as held by the court *a quo,* or it is an action based on *quasi-delict.* In the first case, the action would be premature and would, accordingly, be wanting in a cause of action before a judgment of conviction has been rendered against the negligent driver, for, while a separate civil action may be filed for damages arising from the criminal offense of the accused for criminal negligence, upon proper reservation of said action (Section 2, Rule 111, Rules of Court), the same may not be heard separately in advance or ahead of the criminal action. While in the second case, the action, being for liability based on *quasi-delict,* not for liability arising from crime, may proceed independently from the criminal action. It is also for a different purpose, the liability sought to be imposed on the employer being a primary and direct liability, not merely subsidiary. Civil liability for *quasi-delict* and that arising out of a crime are clearly different and distinct from

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each other, as lucidly demonstrated and discussed in *Barredo vs. Garcia, et al.*, 73 Phil. 607.

Examining the allegations of the complaints, to determine what is made the basis thereof for the relief sought, which is to impose a "joint and several" liability on the defendants (p. 5 Record on Appeal; Page 26, *Rollo*), there is absolutely no reason to exclude and rule out, as the court *a quo* did, the fact that the action is one based on *quasi-delict,* and hold, as again the court did, that the action is based on the criminal offense of negligence, as defined in the Revised Penal Code, committed by the driver alone, and concluding that the purpose of the action is to impose the subsidiary liability on the employer as provided in the same Code.

The court *a quo* said:

"As it is, the complaint really states no cause of action against Donato Fabros in his capacity as employer of Godofredo de la Cruz. Stated differently, the complaint against Donato Fabros is premature, because he is only subsidiarily liable under the Penal Code. His subsidiary liability should not be litigated in the civil action against de la Cruz. It follows that the third-party complaint that he filed is also premature."

From the above observation of the Court, it is crystal clear that the court itself has found that the employer-employee relation of the two defendants has been sufficiently alleged; otherwise, it would have no basis for saying that the complaint is "against Donato Fabros in his capacity as *employer* of Godofredo de la Cruz." The defendant Donato Fabros has himself correctly perceived the basis of the complaint against him, as one based on *quasi-delict,* for instead of filing a motion for a bill of particulars if he deemed the allegations vague or ambiguous, he interposed in his answer the defense of a "due diligence of a good father of a family in the selection, employment and supervision of his driver." (Page 8, Record on Appeal; Page 26, *Rollo*)

In the second place, in alluding to the subsidiary liability of the employer, Donato Fabros, the court *a quo* has, likewise, found sufficiently alleged negligence as the basis for the action.

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The complaint expressly and clearly alleges that the accident was "due solely to the gross negligence, carelessness and unskillful driving of defendant Godofredo de la Cruz" (Page 3, Record on Appeal, Page 20, *Rollo*).

With the allegation of negligence against the driver, Godofredo de la Cruz, and that of an employer-employee relation between him and his co-defendant, Donato Fabros, the complaint clearly and unmistakably makes out a case based on *quasi-delict,* as explicitly provided in Article 2180 of the Civil Code which, *inter alia*, provides:

"x x x The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions."

What needs only to be alleged under the aforequoted provision is that the employee (driver) has, by his negligence (*quasi-delict*) caused damage to make the employer, likewise, responsible for the tortious act of the employee, and his liability is, as earlier observed, primary and solidary. (*Bachrach Motor Co. vs. Gamboa*, L-10296, May 21, 1957; *Malipol vs. Tan,* 55 SCRA 202; *Barredo vs. Garcia and Almario*, 73 Phil. 607; *Vinluan vs. Court of Appeals, et al.*, 16 SCRA 742; *Anuran, et al. vs. Buño, et al.,* 17 SCRA 224).

It is such a firmly established principle, as to have virtually formed part of the law itself, that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is the presumed negligence in the selection and supervision of the employee. The theory of presumed negligence, in contrast with the American doctrine of *respondeat superior*, where the negligence of the employee is *conclusively* presumed to be the negligence of the employer, is clearly deducible from the last paragraph of Article 2180 of the Civil Code which provides that the responsibility therein mentioned shall cease if the employers prove that they observed all the diligence of a good father of a family to prevent damages (12 Manresa, 657; *Balica vs. Litonjua and Leynes*, 30 Phil. 624; *Cangco*

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vs. Manila Railroad Co., 38 Phil. 768), as ob erved in the same cases just cited.

From what has been said, the error of the court *a quo* in dismissing the case on his mistaken notion that the action is based on crime, not quasi-delict, becomes very patent. How the court concluded that the action is to enforce the subsidiary liability of Donato Fabros as the employer of the negligent driver Godofredo de la Cruz is inconceivable, with the plain and explicit prayer of the complaint to declare the defendants "jointly and severally liable for damages, a concept antagonistic to that of subsidiary liability. The death of defendant, Godofredo de la Cruz, the driver, is therefore, no hindrance to the present action, at least as against the employer, Donato Fabros, taking its course to final judgment, which the court *a quo* should have rendered, the trial of the case having been terminated, instead of dismissing the case, without even a motion to dismiss, with the evidence, in all probability, supportive of an action on *quasi-delict*, which the pleadings, both the complaint and the answer, raised as the specific issue involved and as joined by said pleadings.

A word of advice at least as a reminder, may be meet at this juncture, for judges to give a deeper study and reflection in the disposition of cases, so that undue delay which could very well be avoided, as in this case, had the judge been more circumspect and analytical, would not cause injustice to litigants, under the familiar maxim that justice delayed is justice denied, which should constantly sound its stern warning to all dispensers of justice.

WHEREFORE, the order of dismissal dated April 17, 1968 is hereby set aside, and let this case be remanded to the court of origin for the rendition of the judgment on the merits based on the evidence adduced during the trial. This judgment shall be immediately executory upon its promulgation.

Teehankee (Acting C.J.), Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

Makasiar, J., is on official leave.