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THIRD DIVISION

[G.R. No. 199282. March 14, 2016]

TRAVEL & TOURS ADVISERS, INCORPORATED, PETITIONER, VS. ALBERTO CRUZ, SR., EDGAR HERNANDEZ AND VIRGINIA MUÑOZ, RESPONDENTS.

DECISION

PERALTA, J.:

For resolution of this Court is the Petition for *Review on Certiorari* under Rule 45 of the Revised Rules of Court dated December 28, 2011, of petitioner Travel & Tours Advisers, Inc. assailing the Decision[1] dated May 16, 2011 and Resolution[2] dated November 10, 2011 of the Court of Appeals (*CA*), affirming with modifications the Decision[3] dated January 30, 2008 of the Regional Trial Court (*RTC*), Branch 61, Angeles City finding petitioner jointly and solidarity liable for damages incurred in a vehicular accident.

The facts follow.

Respondent Edgar Hernandez was driving an Isuzu Passenger Jitney (jeepney) that he owns with plate number DSG-944 along Angeles-Magalang Road, Barangay San Francisco, Magalang, Pampanga, on January 9, 1998, around 7:50 p.m. Meanwhile,. a Daewoo passenger bus (RCJ Bus Lines) with plate number NXM-116, owned by petitioner Travel and Tours Advisers, Inc. and driven by Edgar Calaycay travelled in the same direction as that of respondent Edgar Hernandez vehicle. Thereafter, the bus bumped the rear portion of the jeepney causing it to ram into an *acacia* tree which resulted in the death of Alberto Cruz, Jr. and the serious physical injuries of Virginia Muñoz.

Thus, respondents Edgar Hernandez, Virginia Muñoz and Alberto Cruz, Sr., father of the deceased Alberto Cruz, Jr., filed a complaint for damages, docketed as Civil Case No. 9006 before the RTC claiming that the collision was due to the reckless, negligent and imprudent manner by which Edgar Calaycay was driving the bus, in complete disregard to existing traffic laws, rules and regulations, and praying that judgment be rendered ordering Edgar

Calaycay and petitioner Travel & Tours Advisers, Inc. to pay the following:

1. For plaintiff Alberto Cruz, Sr.

a. The sum of P140,000.00 for the reimbursement of the expenses incurred for coffin, funeral expenses, for vigil, food, drinks for the internment (sic) of Alberto Cruz, Jr. as part of actual damages;

b. The sum of P300,000.00, Philippine Currency, as moral, compensatory and consequential damges.

c. The sum of P6,000.00 a month as lost of (sic) income from January 9, 1998 up to the time the Honorable Court may fixed (sic);

2. For plaintiff Virginia Muñoz:

a. The sum of P40,000.00, Philippine Currency, for the reimbursement of expenses for hospitalization, medicine, treatment and doctor's fee as part of actual damages;

b. The sum of P150,000.00 as moral, compensatory and consequential damages;

3. For plaintiff Edgar Hernandez:

a. The sum of P42,400.00 for the damage sustained by plaintiffs Isuzu Passenger Jitney as part of actual damages, plus P500.00 a day as unrealized net income for four (4) months;

b. The sum of P150,000.00, Philippine Currency, as moral, compensatory and consequential damages;

4. The sum of P50,000.00 pesos, Philippine Currency, as attorney's fees, plus P1,000.00 per appearance fee in court;

5. Litigation expenses in the sum of P30,000.00; and

6. To pay the cost of their suit.

Other reliefs just and equitable are likewise prayed for.[4]

For its defense, the petitioner claimed that it exercised the diligence of a good father of a family in the selection and supervision of its employee Edgar Calaycay and further argued that it was Edgar Hernandez who was driving his passenger jeepney in a reckless and imprudent manner by suddenly entering the lane of the petitioner's bus without seeing to it that the road was clear for him to enter said lane. In addition, petitioner alleged that at the time of the incident, Edgar Hernandez violated his franchise by travelling along an unauthorized line/route and that the jeepney was overloaded with passengers, and the deceased Alberto Cruz, Jr. was clinging at the back thereof.

On January 30, 2008, after trial on the merits, the RTC rendered judgment in favor of the respondents, the dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the defendants Edgar Calaycay Ranese and Travel & Tours Advisers, Inc. to jointly and solidarity pay the following:
>
> I. 1. To plaintiff Alberto Cruz, Sr. and his family –
>
> a) the sum of P50,000.00 as actual and compensatory damages;
>
> b) the sum of P250,000.00 for loss of earning capacity of the decedent Alberto Cruz, Jr. and ;
>
> c) the sum of P50,000.00 as moral damages.
>
> 2. To plaintiff Virginia Muñoz –
>
> a) the sum of P16,744.00 as actual and compensatory damages; and
>
> b) the sum of P150,000.00 as moral damages.
>
> 3. To Edgar Hernandez –

a) the sum of P50,000.00 as actual and compensatory damages.

II. The sum of P50,000.00 as attorney's fees, and

III. The sum of P4,470.00 as cost of litigation

SO ORDERED.

Angeles City, Philippines, January 30, 2008.[5]

Petitioner filed its appeal with the CA, and on May 16, 2011, the appellate court rendered its decision, the decretal portion of which reads as follows:

WHEREFORE, the instant appeal is PARTLY GRANTED. The assailed Decision of the RTC, Branch 61, Angeles City, dated January 30, 2008, is AFFIRMED with MODIFICATIONS. The defendants are ordered to pay, jointly and severally, the following:

1. To plaintiff Alberto Cruz, Sr. and family –

a) the sum of P25,000.00 as actual damages;

b) the sum of P250.000.00 for the loss of earning capacity of the decedent Alberto Cruz, Jr.;

c) the sum of P50,000.00 as civil indemnity for the death of Alberto Cruz, Jr.;

d) the sum of P50,000.00 as moral damages.

2. To plaintiff Virginia Muñoz –

a) the sum of P16,744.00 as actual damages; and

b) the sum of P30,000.00 as moral damages.

3. To plaintiff Edgar Hernandez –

a) The sum of P40,200.00 as actual damages.

4. The award of attorney's fees (P50,000.00) and cost of litigation (P4,470.00) remains.

SO ORDERED.[6]

Hence, the present petition wherein the petitioner assigned the following errors:

I.

THE PETITIONER'S BUS WAS NOT "OUT OF LINE;"

II.

THE FACT THAT THE JEEPNEY WAS BUMPED ON ITS LEFT REAR PORTION DOES NOT PREPONDERANTLY PROVE THAT THE DRIVER OF THE BUS WAS THE NEGLIGENT PARTY;

III.

THE DECEASED ALBERTO CRUZ, JR. WAS POSITIONED AT THE RUNNING BOARD OF THE JEEPNEY;

IV.

THE BUS DRIVER WAS NOT SPEEDING OR NEGLIGENT WHEN HE FAILED TO STEER THE BUS TO A COMPLETE STOP;

V.

THE PETITIONER EXERCISED EXTRAORDINARY DILIGENCE OF A GOOD FATHER OF A FAMILY IN ITS SELECTION AND SUPERVISION OF DRIVER

CALAYCAY; AND

VI.

THERE IS NO FACTUAL AND LEGAL BASIS FOR THE VARIOUS AWARDS OF MONETARY DAMAGES.[7]

According to petitioner, contrary to the declaration of the RTC, the petitioner's passenger bus was not "out-of-line" and that petitioner is actually the holder of a PUB (public utility bus) franchise for provincial operation from Manila-Ilocos Norte/Cagayan-Manila, meaning the petitioner's passenger bus is allowed to traverse any point between Manila-Ilocos Norte/Cagayan-Manila. Petitioner further asseverates that the fact that the driver of the passenger bus took the Magalang Road instead of the Bamban Bridge is of no moment because the bridge was under construction due to the effects of the lahar; hence closed to traffic and the Magalang Road is still in between the points of petitioner's provincial operation. Furthermore, petitioner claims that the jeepney was traversing a road way out of its allowed route, thus, the presumption that respondent Edgar Hernandez was the negligent party.

Petitioner further argues that respondent Edgar Hernandez failed to observe that degree of care, precaution and vigilance that his role as a public utility called for when he allowed the deceased Alberto Cruz, Jr., to hang on to the rear portion of the jeepney.

After due consideration of the issues and arguments presented by petitioner, this Court finds no merit to grant the petition.

Jurisprudence teaches us that "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals x x x is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[8] This rule, however, is not without exceptions."[9] The findings of fact of the Court of Appeals, which are, as a general rule, deemed conclusive, may admit of review by this Court:[10]

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the findings are grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

The issues presented are all factual in nature and do not fall under any of the exceptions upon which this Court may review. Moreover, well entrenched is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, which applies with greater force to the Petition under consideration because the factual findings by the Court of Appeals are in full agreement with what the trial court found.[11]

Nevertheless, a review of the issues presented in this petition would still lead to the finding that petitioner is still liable for the damages awarded to the respondents but with certain modifications.

The RTC and the CA are one in finding that both vehicles were not in their authorized routes

at the time of the incident. The conductor of petitioner's bus admitted on cross-examination that the driver of the bus veered off from its usual route to avoid heavy traffic. The CA thus observed:

> *First*. As pointed out in the assailed Decision, both vehicles were not in their authorized routes at the time of the mishap. FRANCISCO TEJADA, the conductor of defendant-appellant's bus, admitted on cross-examination that the driver of the bus passed through Magalang Road instead of Sta. Ines, which was the usual route, thus:
>
> x x x
>
> Q: What route did you take from Manila to Laoag, Ilocos Sur?
> A: Instead of Sta. Ines, we took Magalang Road, sir.
>
> **Q: So that is not your usual route that you are taking?**
> **A: No, sir, it so happened that there was heavy traffic at Bamban, Tarlac, that is why we took the Magalang Road.**
>
> x x x
>
> The foregoing testimony of defendant-appellant's own witness clearly belies the contention that its driver took the Magalang Road instead of the Bamban Bridge because said bridge was closed and under construction due to the effects of lahar. Regardless of the reason, however, the irrefutable fact remains that defendant-appellant's bus likewise veered from its usual route.[12]

Petitioner now claims that the bus was not out of line when the vehicular accident happened because the PUB (public utility bus) franchise that the petitioner holds is for provincial operation from Manila-Ilocos Norte/Cagayan-Manila, thus, the bus is allowed to traverse any point between Manila-Ilocos Norte/Cagayan-Manila. Such assertion is correct. "Veering away from the usual route" is different from being "out of line." A public utility vehicle can and may veer away from its usual route as long as it does not go beyond its allowed route in its franchise, in this case, Manila-Ilocos Norte/Cagayan-Manila. Therefore, the bus cannot be considered to have violated the contents of its franchise. On the other hand, it is indisputable that the jeepney was traversing a road out of its allowed route. Necessarily, this case is not that of "*in pari delicto*" because only one party has violated a traffic

regulation. As such, it would seem that Article 2185 of the New Civil Code is applicable where it provides that:

> Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

The above provision, however, is merely a presumption. From the factual findings of both the RTC and the CA based on the evidence presented, the proximate cause of the collision is the negligence of the driver of petitioner's bus. The jeepney was bumped at the left rear portion. Thus, this Court's past ruling,[13] that drivers of vehicles who bump the rear of another vehicle are presumed to be the cause of the accident, unless contradicted by other evidence, can be applied. The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.[14] Thus, as found by the CA:

> *Second*. The evidence on record preponderantly shows that it was the negligence of defendant-appellant's driver, EDGAR CALAYCAY, that was the proximate cause of the collision.
>
> Even without considering the photographs (Exhibit "N", " " and "N-2") showing the damage to the jeepney, **it cannot be denied that the said vehicle was bumped in its left rear portion by defendant-appellant's bus**. The same was established by the unrebutted testimonies of plaintiffs-appellees EDGAR HERNANDEZ and VIRGINIA MUÑOZ, as follows:
>
> > EDGAR HERNANDEZ
> >
> > x x x
> >
> > Q: Now, according to you, you were not able to reach the town proper of Magalang because your vehicle was bumped. In what portion of your vehicle was it bumped, Mr. Witness?
> > A: At the left side edge portion of the vehicle, sir.
> >
> > Q: When it was bumped on the rear left side portion, what happened

to your vehicle?
A: It was bumped strongly, sir, and then, "sinulpit ya", sir.

Q: When your vehicle was "sinulpit" and hit an acacia tree, what happened to the acacia tree?
A: The jeepney stopped and Alberto Cruz died and some of my passengers were injured, sir.

x x x

VIRGINIA MUÑOZ

x x x

Q: what portion of the vehicle wherein you were boarded that was hit by the Travel Tours Bus?
A: The rear portion of the jeep, sir.

Q: It was hit by the Travel Tours Bus?
A: Yes, sir.

Q: What happened to you when the vehicle was bumped?
A: I was thrown off the vehicle, sir.

x x x

It has been held that drivers of vehicles "who bump the rear of another vehicle" are presumed to be "the cause of the accident, unless contradicted by other evidence." The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.

In the case at bar, defendant-appellant failed to overturn the foregoing presumption. FRANCISCO TEJADA, the conductor of the bus who was admittedly "seated in front, beside the driver's seat," and thus had an unimpeded view of the road, declared on direct examination that the jeepney was about 10 to 15 meters away from the bus when he first saw said vehicle on the road. Clearly, the bus driver, EDGAR CALAYCAY, would have also been aware of the presence of the

jeepney and, thus, was expected to anticipate its movements.

However, on cross-examination, TEJADA claimed that the jeepney "suddenly appeared" before the bus, passing it diagonally, and causing it to be hit in its left rear side. Such uncorroborated testimony cannot be accorded credence by this Court because it is inconsistent with the physical evidence of the actual damage to the jeepney. On this score, We quote with approval the following disquisition of the trial court:

> x x x (F)rom the evidence presented, it was established that it was the driver of the RCJ Line Bus which was negligent and recklessly driving the bus of the defendant corporation.
>
> Francisco Tejada, who claimed to be the conductor of the bus, testified that it was the passenger jeepney coming from the pavement which suddenly entered diagonally the lane of the bus causing the bus to hit the rear left portion of the passenger jeepney. But such testimony is belied by the photographs of the jeepney (Exhs. N and N-1). As shown by Exh. N-1, the jeepney was hit at the rear left portion and not when the jeepney was in a diagonal position to the bus otherwise, it should have been the left side of the passenger jeepney near the rear portion that could have been bumped by the bus. It is clear from Exh. N-1 and it was even admitted that the rear left portion of the passenger jeepney was bumped by the bus. Further, if the jeepney was in diagonal position when it was hit by the bus, it should have been the left side of the body of the jeepney that could have sustained markings of such bumping. In this case, it is clear that it is the left rear portion of the jeepney that shows the impact of the markings of the bumping. The jeepney showed that it had great damage on the center of the front portion (Exh. N-2). It was the center of the front portion that hit the acacia tree (Exh. N). As admitted by the parties, both vehicles were running along the same direction from west to east. As testified to by Francisco Tejada, the jeepney was about ten (10) to fifteen (15) meters away from the bus when he noticed the jeepney entering diagonally the lane of the bus. If this was so, the middle left side portion of the jeepney could have been hit, not the rear portion. The

> evidence is clear that the bus was in fast running condition, otherwise, it could have stopped to evade hitting the jeepney. The hitting of the acacia tree by the jeepney, and the damages caused on the jeepney in its front (Exh. N-2) and on its rear left side show that the bus was running very fast.
>
> x x x x

Assuming *ex gratia argumenti* that the jeepney was in a "stop position," as claimed by defendant-appellant, on the pavement of the road 10 to 15 meters ahead of the bus before swerving to the left to merge into traffic, a cautious public utility driver should have stepped on his brakes and slowed down. The distance of 10 to 15 meters would have allowed the bus with slacked speed to give way to the jeepney until the latter could fully enter the lane. Obviously, as correctly found by the court *a quo*, the bus was running very fast because even if the driver stepped on the brakes, it still made contact with the jeepney with such force that sent the latter vehicle crashing head-on against an acacia tree. In fact, FRANCISCO TEJADA effectively admitted that the bus was very fast when he declared that the driver "could not suddenly apply the break (sic) in full stop because our bus might turn turtle xxx." Incidentally, the allegation in the appeal brief that the driver could not apply the brakes with force because of the possibly that the bus might turn turtle "as they were approaching the end of the gradient or the decline of the sloping terrain or topography of the roadway" was only raised for the first time in this appeal and, thus, may not be considered. Besides, there is nothing on record to substantiate the same.

Rate of speed, in connection with other circumstances, is one of the principal considerations in determining whether a motorist has been reckless in driving a vehicle, and evidence of the extent of the damage caused may show the force of the impact from which the rate of speed of the vehicle may be modestly inferred. From the evidence presented in this case, it cannot be denied that the bus was running very fast. As held by the Supreme Court, the very fact of speeding is indicative of imprudent behavior, as a motorist must exercise ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered, which will enable him to keep the vehicle under control and avoid injury to others using the highway.[15]

From the above findings, it is apparent that the proximate cause of the accident is the petitioner's bus and that the petitioner was not able to present evidence that would show otherwise. Petitioner also raised the issue that the deceased passenger, Alberto Cruz, Jr. was situated at the running board of the jeepney which is a violation of a traffic regulation and an indication that the jeepney was overloaded with passengers. The CA correctly ruled that no evidence was presented to show the same, thus:

> That the deceased passenger, ALBERTO CRUZ, JR., was clinging at the back of the jeepney at the time of the mishap cannot be gleaned from the testimony of plaintifff-appellee VIRGINIA MUÑOZ that it was she who was sitting on the left rearmost of the jeepney.
>
> VIRGINIA MUÑOZ herself testified that there were only about 16 passengers on board the jeepney when the subject incident happened. Considering the testimony of plaintiff-appellee EDGAR HERNANDEZ that the seating capacity of his jeepney is 20 people, VIRGINIA'S declaration effectively overturned defendant-appellant's defense that plaintiff-appellee overloaded his jeepney and allowed the deceased passenger to cling to the outside railings. Yet, curiously, the defense declined to cross-examine VIRGINIA, the best witness from whom defendant-appellant could have extracted the truth about the exact location of ALBERTO CRUZ, JR. in or out of the jeepney. Such failure is fatal to defendant-appellant's case. The only other evidence left to support its claim is the testimony of the **conductor, FRANCISCO TEJADA, that there were 3 passengers who were clinging to the back of the jeepney, and it was the passenger clinging to the left side that was bumped by the bus. However, in answer to the clarificatory question from the court *a quo*, TEJADA admitted that he did not really see what happened, thus:**
>
> > **Q: What happened to the passenger clinging to the left side portion?**
> > **A: He was bumped, your Honor.**
> >
> > Q: Why, the passenger fell?
> > A: I did not really see what happened, Mam [sic], what I know he was bumped.

> This, despite his earlier declaration that he was seated in front of the bus beside the driver's seat and knew what happened to the passengers who were clinging to the back of the jeepney. Indubitably, therefore, TEJADA was not a credible witness, and his testimony is not worthy of belief.[16]

Consequently, the petitioner, being the owner of the bus and the employer of the driver, Edgar Calaycay, cannot escape liability. Article 2176 of the Civil Code provides:

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Complementing Article 2176 is Article 2180 which states the following:

> The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible x x x.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry x x x.
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to escape solidary liability for quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care.[17] In this case, the petitioner failed to

do so. The RTC and the CA exhaustively and correctly ruled as to the matter, thus:

> Thus, whenever an employee's (defendant EDGAR ALAYCAY) negligence causes damage or injury to another, there instantly arises a presumption that the employer (defendant-appellant) failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees. To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption by presenting convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employee. The failure of the defendant-appellant to overturn this presumption was meticulously explained by the court *a quo* as follows:
>
> > The position of the defendant company that it cannot be held jointly and severally liable for such damages because it exercised the diligence of a good father of a family, that (sic) does not merit great credence.
> >
> > As admitted, Edgar Calaycay was duly authorized by the defendant company to drive the bus at the time of the incident. Its claim that it has issued policies, rules and regulation's to be followed, conduct seminars and see to it that their drivers and employees imbibe such policies, rules and regulations, have their drivers and conductors medically checked-up and undergo drug-testing, did not show that all these rudiments were applied to Edgar Calaycay. No iota of evidence was presented that Edgar Calaycay had undergone all these activities to ensure that he is a safe and capable drivers [sic]. In fact, the defendant company did not put up a defense on the said driver. The defendant company did not even secure a counsel to defend the driver. It did not present any evidence to show it ever counseled such driver to be careful in his driving. As appearing from the evidence of the defendant corporation, the driver at the time of the incident was Calaycay Francisco (Exh. 9) and the conductor was Tejada. This shows that the defendant corporation does not exercise the diligence of a good father of a family in the selection and supervision of the employees. It does not even know the correct and true name of its

drivers. The testimony of Rolando Abadilla, Jr. that they do not have the records of Edgar Calaycay because they ceased operation due to the death of his father is not credible. Why only the records of Edgar Calaycay? It has the inspection and dispatcher reports for January 9, 1998 and yet it could not find the records of Edgar Calaycay. As pointed out by the Supreme Court in a line of cases, the evidence must not only be credible but must come from a credible witness. No proof was submitted that Edgar Calaycay attended such alleged seminars and examinations. Thus, under Art. 2180 of the Civil Code, Employers shall be liable for the damage caused by their employees and household helper acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. The liability of the employer for the tortuous acts or negligence of its employer [sic] is primary and solidary, direct and immediate, and not conditional upon the insolvency of prior recourse against the negligent employee. The cash voucher for the alleged lecture on traffic rules and regulations (Exh. 12) presented by the defendant corporation is for seminar allegedly conducted on May 20 and 21, 1995 when Edgar Calaycay was not yet in the employ of the defendant corporation. As testified to by Rolando Abadilla, Jr., Edgar Calaycay stated his employment with the company only in 1996. Rolando Abadilla, Jr. testified that copies of the manual (Exh. 8) are given to the drivers and conductors for them to memorize and know the same, but no proof was presented that indeed Edgar Calaycay was among the recipients. Nobody testified categorically that indeed Edgar Calaycay underwent any of the training before being employed by the defendant company. All the testimonies are generalizations as to the alleged policies, rules and regulations but no concrete evidence was presented that indeed Edgar Calaycay underwent such familiarization, trainings and seminars before he got employed and during that time that he was performing his duties as a bus driver of the defendant corporation. Moreover, the driver's license of the driver was not even presented. These omissions did not overcome the liability of the defendant corporation under Article 2180 of the Civil Code. x x x

The observation of the court *a quo* that defendant-appellant failed to show proof

that EDGAR CALAYCAY did in fact undergo the seminars conducted by it assumes greater significance when viewed in the light of the following admission made by ROLANDO ABADILLA, JR., General Manager of the defendant-appellant corporation, that suggest compulsory attendance of said seminars only among drivers and conductors in Manila, thus:

> x x x x
>
> Q: How many times does (sic) the seminars being conducted by your company a year?
> A: Normally, it is a minimum of two (2) seminars per year, sir.
>
> Q: In these seminars that you conduct, are all drivers and conductors obliged to attend?
> A: Yes, sir, if they are presently in Manila.
>
> Q: It is only in Manila that you conduct seminars?
> A: Yes, sir.
>
> x x x

Moreover, with respect to the selection process, ROLANDO ABADILLA, JR. categorically admitted in open court that EDGAR CALAYCAY was not able to produce the clearances required by defendant-appellant upon employment, thus:

> x x x x
>
> Q: By the way, Mr. Witness, do you know this Edgar Calaycay who was once employed by your company as a driver?
> A: Yes, sir.
>
> Q: Have you seen the application of Edgar Calaycay?
> A: Yes, sir.
>
> Q: From what I have seen, what documents did he submit in applying as a driver in your business?

> Atty. De Guzman: Very leading, your Honor.
>
> Q: Before a driver could be accepted, what document is he required to submit?
> A: The company application form; NBI clearance; police clearance; barangay clearance; mayor's clearance and other clearances, sir.
>
> Q: Was he able to reproduce these clearances by Mr. Calaycay?
> A: No, sir.
>
> x x x[18]

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records.[19] On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulations for the guidance of employees, the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.[20] In this case, as shown by the above findings of the RTC, petitioner was not able to prove that it exercised the required diligence needed in the selection and supervision of its employee.

Be that as it may, this doesn't erase the fact that at the time of the vehicular accident, the jeepney was in violation of its allowed route as found by the RTC and the CA, hence, the owner and driver of the jeepney likewise, are guilty of negligence as defined under Article 2179 of the Civil Code, which reads as follows:

> When the plaintiffs negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The petitioner and its driver, therefore, are not solely liable for the damages caused to the victims. The petitioner must thus be held liable only for the damages actually caused by his negligence.[21] It is, therefore, proper to mitigate the liability of the petitioner and its driver. The determination of the mitigation of the defendant's liability varies depending on the circumstances of each case.[22] The Court had sustained a mitigation of 50% in *Rakes v. AG & P*;[23] 20% in *Phoenix Construction, Inc. v. Intermediate Appellate Court*[24] and *LBC Air Cargo, Inc. v. Court of Appeals*;[25] and 40% in *Bank of the Philippine Islands v. Court of Appeals*[26] and *Philippine Bank of Commerce v. Court of Appeals*.[27]

In the present case, it has been established that the proximate cause of the death of Alberto Cruz, Jr. is the negligence of petitioner's bus driver, with the contributory negligence of respondent Edgar Hernandez, the driver and owner of the jeepney, hence, the heirs of Alberto Cruz, Jr. shall recover damages of only 50% of the award from petitioner and its driver. Necessarily, 50% shall be bourne by respondent Edgar Hernandez. This is pursuant to *Rakes v. AG & P* and after considering the circumstances of this case.

In awarding damages for the death of Alberto Cruz, Jr., the CA ruled as follows:

> For the death of ALBERTO CRUZ, JR. the court *a quo* awarded his heirs P50,000.00 as actual and compensatory damages; P250,000.00 for loss of earning capacity; and another P50,000.00 as moral damages. However, as pointed out in the assailed Decision dated January 30, 2008, only the amount paid (P25,000.00) for funeral services rendered by Magalena Memorial Home was duly receipted (Exhibit "E-1"). It is settled that actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim. As such, the award for actual damages in the amount of P50,000.00 must be modified accordingly.
>
> Under Article 2206 of the Civil Code, the damages for death caused by a *quasi-delict* shall, in addition to the indemnity for the death itself which is fixed by current jurisprudence at P50,000.00 and which the court *a quo* failed to award in this case, include loss of the earning capacity of the deceased and moral damages for mental anguish by reason of such death. The formula for the computation of loss of earning capacity is as follows:
>
> Net earning capacity = Life expectancy x [Gross Annual Income – Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 – the

age of the deceased)

Evidence on record shows that the deceased was earning P6,000.00 a month as smoke house operator at Pampanga's Best, Inc., as per Certification (Exhibit "K") issued by the company's Production Manager, Enrico Ma. O. Hizon, on March 18, 1998, His gross income therefore amounted to P72,000.00 [P6,000.00 x 12]. Deducting 50% therefrom (P36,000.00) representing the living expenses, his net annual income amounted to P36,000.00. Multiplying this by his life expectancy of 40.67 years [2/3(80-19)] having died at the young age of 19, the award for loss of earning capacity should have been P1,464,000.00. Considering, however, that his heirs represented by his father, ALBERTO CRUZ, SR., no longer appealed from the assailed Decision dated January 30, 2008, and no discussion thereon was even attempted in plaintiffs-appellees' appeal brief, the award for loss of earning capacity in the amount of P250,000.00 stands.

Moral damages in the amount of P50,000.00 is adequate and reasonable, bearing in mind that the purpose for making such award is not to enrich the heirs of the victim but to compensate them however inexact for injuries to their feelings.

xxx[28]

In summary, the following were awarded to the heirs of Alberto Cruz, Jr.:

1) P25,000.00 as actual damages;

2) P250,000.00 for the loss of earning;

3) P50,000.00 as civil indemnity for the death of Alberto Cruz, Jr.; and

4) P50,000.00 as moral damages

Petitioner contends that the CA erred in awarding an amount for the loss of earning capacity of Alberto Cruz, Jr. It claims that the certification from the employer of the deceased stating that when he was still alive – he earned P6,000.00 per month was not presented and identified in open court.

In that aspect, petitioner is correct. The records are bereft that such certification was

presented and identified during the trial. It bears stressing that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.[29]

Therefore, applying the above disquisitions, the heirs of Alberto Cruz, Jr. shall now be awarded the following:

1) P12,500.00 as actual damages;

2) P25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and

3) P25,000.00 as moral damages.

In the same manner, petitioner is also partly responsible for the injuries sustained by respondent Virginia Muñoz hence, of the P16,744.00 actual damages and P30,000.00 moral damages awarded by the CA, petitioner is liable for half of those amounts. Anent respondent Edgar Hernandez, due to his contributory negligence, he is only entitled to receive half the amount (P40,200.00) awarded by the CA as actual damages which is P20,100.00.

As to the award of attorney's fees, it is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208[30] of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[31] In this case, the RTC, in awarding attorney's fees, reasoned out that *[w]hile there is no document submitted to prove that the plaintiffs spent attorney's fees, it is clear that they paid their lawyer in the prosecution of this case for which they are entitled to the same*.[32] Such reason is conjectural and does not justify the grant of the award, thus, the attorney's fees should be deleted. However, petitioner shall still have to settle half of the cost of the suit.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45, dated December 28, 2011, of petitioner Travel & Tours Advisers, Inc. is **DENIED**. However, the Decision dated May 16, 2011 of the Court of Appeals is **MODIFIED** as follows:

The petitioner and Edgar Calaycay are **ORDERED** to jointly and severally **PAY** the following:

1. To respondent Alberto Cruz, Sr. and family:

    a) P12,500.00 as actual damages;

    b) P25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and

    c) P25,000.00 as moral damages.

2. To respondent Virginia Muñoz:

    a) P8,372.00 as actual damages;

    b) P15,000.00 as moral damages.

3. To respondent Edgar Hernandez:

    a) P20,100.00 as actual damages, and

4. The sum of P2,235.00 as cost of litigation.

Respondent Edgar Hernandez is also **ORDERED** to **PAY** the following:

1. To respondent Alberto Cruz, Sr. and family:

    a) P12,500.00 as actual damages;

b) P25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and

c) P25,000.00 as moral damages.

2. To respondent Virginia Muñoz:

a) P8,372.00 as actual damages;

b) P15,000.00 as moral damages, and

3. The sum of P2,235.00 as cost of litigation.

SO ORDERED.

Velasco, Jr., (Chairperson), Perez, Reyes, and *Jardeleza, JJ.*, concur.

April 6, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **March 14, 2016** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 6, 2016 at 11:00 a.m.

Very truly yours,
(SGD)WILFREDO V. LAPITAN
Division Clerk of Court

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 39-57.

[2] *Id.* at 58.

[3] Penned by Judge Bernardita Gabitan Erum, *id.* at 79-98.

[4] Complaint dated April 22, 1998, *id.* at 70.

[5] *Rollo*, p. 98.

[6] *Id.* at 56.

[7] *Id.* at 14-15.

[8] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1993).

[9] *Gaw v. Intermediate Appellate Court*, G.R. No. 70451, March 24, 1993, 220 SCRA 405, 413; citing *Morales v. Court of Appeals*, 21A Phil. 674 (1991); and *Navarra v. Court of Appeals*, G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[10] *Reyes v. Court of Appeals*, 328 Phil. 171 (1996); *Vda. de Alcantara v. Court of Appeals*, 322 Phil. 490 (1996); *Quebrai v. Court of Appeals*, G.R. No. 101941, January 25, 1996, 252 SCRA 353, 368 (citing *Calde v. Court of Appeals*, G.R. No. 93980, June 27, 1994, 233 SCRA 376. See also *Cayabyab v. The Honorable Intermediate Appellate Court*, G.R. No. 75120, April 28, 1994, 232 SCRA 1), *Engineering & Machinery Corporation v. Court of Appeals*, 322 Phil. 161 (1996), *Chua Tiong Tay v. Court of Appeals*, 312 Phil. 1128 (1995), *Dee v. Court of Appeals*, G.R. No. 111153, November 21, 1994, 238 SCRA 254, 263, and *Asia Brewery, Inc. v. Court of Appeals*, G.R. No. 103543, July 5, 1993, 224 SCRA 437, 443; *Fuentes v. Court of Appeals*, supra note 8.

[11] *Boneng y Bagawili v. People*, 363 Phil. 594, 605 (1999).

[12] *Rollo*, p. 44. (Emphasis ours)

[13] *Raynera v. Hiceta*, 365 Phil. 546 (1999).

[14] *Id.*

[15] *Rollo*, pp. 44-48. (Citations omitted; emphasis ours)

[16] *Id.* at 48-49. (Citations omitted, emphasis ours)

[17] *Baliwag Transit, Inc. v. CA, et al.,* 330 Phil. 785, 789-790 (1996), citing *China Air Lines, Ltd. v. Court of Appeals*, 264 Phil. 15, 26 (1990).

[18] *Rollo*, pp. 49-52. (Citations omitted).

[19] *Metro Manila Transit Corporation v. Court of Appeals*, 359 Phil. 18, 32 (1998).

[20] *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 104408, June 21, 1993, 223 SCRA 521, 540-541.

[21] See *Syki v. Begasa*, 460 Phil. 381, 391 (2003).

[22] *Lambert v. Heirs of Castillon,* 492 Phil. 384, 396 (2005).

[23] 7 Phil. 359 (1907).

[24] 232 Phil. 327 (1987).

[25] 311 Phil. 715 (1995).

[26] G.R. No. 102383, November 26, 1992, 216 SCRA 51.

[27] 336 Phil. 667 (1997).

[28] *Rollo*, pp. 52-54. (Citations omitted)

[29] *People v. Ereno*, 383 Phil. 30, 46 (2000).

[30] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) **In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.**

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

[31] *Benedicto v. Villaflores*, 646 Phil. 733, 742 (2010).

[32] *Rollo*, p. 98.

Date created: March 06, 2018