

**ROGELIO SIPALAY AND FLORIDA MAZO, PLAINTIFFS-APPELLANTS,
VS. YELLOW BUS LINE CO., INC, AND ELISIO P. GILLO-ANO,
DEFENDANTS-APPELLEES.**

Ponente: INTING, J.

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INTING, J.:

This is an appeal from the March 13, 2003 Decision[1] of the Regional Trial Court, Branch 13, Davao City in Civil Case No. 21,997-93 for damages, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of defendants and against plaintiffs. The complaint of plaintiffs is hereby dismissed for lack of merit.

Plaintiffs for their part are directed to pay defendant Yellow Bus Line the amount of P30,000.00, representing Attorney's fees.

The other claims of defendants for damages which are not supported by receipts or other documentary evidence are denied.

SO ORDERED."

The facts of the case are as follows:

On January 5, 1993 at about 5:25 in the afternoon, herein plaintiff Florida Mazo was on her way to collect dues on board their company vehicle, a Fiera Fuso bearing Plate No. LAS 115 (Fiera). With her was their driver Teodoro Lansangan. They were plying Quimpo Avenue approaching the junction of Sandawa Road in Davao City.[2] Before reaching the junction, Florida saw a yellow bus bearing Plate No. LVK 225 (Bus) about three (3) meters away. The Bus was plying Sandawa Road from the left, and also approaching the crossing. The Bus was running fast while traversing the intersection, thus causing its rear right side to hit the Fiera which was on halt at that time. Because of the strong impact, Teodoro was thrown out of the Fiera and into the road pavement; while Florida was pushed towards the dashboard. The Fiera was stuck to the rear right side of the bus, dragged until it was freed, and thrown to the left shoulder of the Sandawa Road.

The Bus driver left the scene leaving Teodoro and Florida injured, and the Fiera damaged on its left front side. The Fiera's owner, herein co-plaintiff Rogelio Sipalay, wrote the Bus operator to settle the expenses for the damages and injuries brought about by the accident caused by the Bus, but to no avail. Hence, Rogelio and Florida filed a complaint for damages before the RTC on April 19, 1993.[3]

In their Answer,[4] the defendants aver that it was the Fiera that bumped their Bus. Elisio Gillo-ano, the bus driver, with his conductor, was plying Sandawa Road from the Eco Terminal where he dropped off the passengers from General Santos. From the terminal, Eliseo and the conductor were to proceed to their garage in Ma-a via the Sandawa Road. They were then following a Volkswagen which stopped in the intersection of Sandawa Road and Quimpo Boulevard. While the Bus was on stop, Elisio saw the Fiera plying Quimpo Boulevard on the right about 30 meters away from the intersection. When the Volkswagen started to cross the intersection, Eliseo drove the

Bus forward. But just as the rear side of the Bus was about to finish crossing, the Fiera suddenly rammed the right side of the Bus, about 3 meters from its rear end. As the impact was very strong, the Fiera's fender stuck to the Bus. Elisio looked through the window and saw a man seated on the road pavement. Elisio went down from the bus to help, but before he could do so, he saw someone in the act of throwing a stone at him. This prompted Elisio to go back to the bus and drive to the police station about 300 meters away from the site.

During the trial, Florida and Teodoro testified to corroborate the allegations against the Yellow Bus Co. They maintained that it was the Bus that bumped the Fiera, which at that moment was already on stop at the intersection due to the traffic and the slow moving vehicles traversing the Sandawa Road.[5] Rogelio was presented to prove the expenses he incurred for the repairs of the Fiera which amounted to P22,380.[6]

For the defense, Eleuterio Geraldizo, Jr., the conductor, the driver Eliseo and several Yellow Bus employees who investigated the incident were presented. Eleuterio and Eliseo insist that from the terminal, they were following a Volkswagen beetle which was running about 40 km./hr. due to heavy traffic.[7] The Volkswagen stopped at the intersection of Sandawa Road and Quimpo Blvd. The Bus also stopped. As the Volkswagen started to cross the intersection, the Bus followed. Suddenly Eliseo and Eleuterio, Jr. heard a loud explosion from the right rear side of the Bus.[8] When they looked through the bus window, they saw a Fiera spinning towards the left side of the Bus[9] going towards a gutter on the other side of the Sandawa Road.[10] They also saw a man sitting on the pavement.[11] Thinking of helping the injured man, Eliseo stopped the Bus and alighted. However, as he was about to approach the injured man, he saw another person in the act of throwing a stone at him. This impelled him to get on the Bus again and drive away to the police station about 300 m. away from the scene.[12] The dent on the right side of the Bus was located 3 meters from its rear end. The Fiera's fender/ grill was attached to the Bus.[13]

The RTC rendered the assailed decision finding that it was the Fiera that came into contact with the Bus hitting the latter's rear portion; that the Fiera was not at a stop position during the collision as alleged by the plaintiffs since the Fiera was able to travel towards the left or the other side of the Sandawa Road hitting a traffic sign before it went to a halt; and that if the Bus indeed sideswiped the Fiera, the impact would have been on the front of the Bus or at the very least, at the middle, but not at the rear end. Accordingly, the RTC dismissed the plaintiffs' complaint and ordered them to pay the defendants' attorney's fees.

Hence, this appeal by the plaintiffs with the following errors to wit:

I.

THE COURT A QUO SERIOUSLY ERRED IN DECLARING THAT IT WAS THE FORD FIERA OF THE PLAINTIFFS-APPELLANTS WHICH BUMPED THE YELLOW BUS OF THE DEFENDANT;

II.

THE COURT A QUO SERIOUSLY ERRED IN ORDERING THE PLAINTIFFS-APPELLANTS TO PAY DEFENDANTS-APPELLEES ATTORNEY'S FEE OF P30,000.00;

III.

THE COURT A QUO SERIOUSLY ERRED IN FAILING TO AWARD THE CLAIMS OF THE PLAINTIFFS-APPELLANTS.

The plaintiffs-appellants maintain that the Fiera was at a stop position when it was hit by the Bus, but the latter dragged the Fiera towards the other side of the Sandawa Road thus, hitting the road sign located on the left side of the aforementioned road; that the front part of the Bus could not have hit the Fiera because the former was running at a fast speed causing it to sway its rear end to its right thereby hitting the left front side of the Fiera upon crossing the intersection; and that if the Fiera bumped the Bus, the Fiera should have bounced back to the

direction from where it came as a result of the impact and not towards the other side of the Sandawa Road.

Our Ruling

The appeal is partly with merit.

First and third errors, being interrelated will be discussed jointly.

No pictures were taken at the scene of the accident nor were there photos of the vehicles' positions during that fateful incident. Nevertheless, photos of the damages sustained by the respective vehicles were proffered. Based on those pictures, coupled with the sketches and the testimonies of the witnesses, this Court is convinced that it was the Fiera and not the Bus which caused the mishap of the two vehicles as aptly found by the RTC.

From the records, it was well-established that both vehicles were on motion during the impact. The Bus was plying the Sandawa Road approaching the crossing of Quimpo Boulevard. In the meantime, the Fiera was navigating Quimpo Boulevard coming from the right if facing the direction where the Bus was going. The Fiera was also about to cross the intersection. Based on where the impact was on the Bus, it is clear that the Bus was able to cross the junction first considering that the bus was hit on its right rear side. This shows that the Fiera was moving speedily because it was not able to stop in time for the Bus to completely cross the road. It bears noting that the bus driver saw the Fiera while it was still about 30 meters from the intersection which gave the Bus ample time to cross the junction unless the Fiera was running at a fast speed. We are not persuaded that the Bus sideswiped the Fiera. The rear right side of the Bus caved in. That was where the Fiera's fender got stuck. Likewise, the front left side of the Fiera was also dented inwards, but it was without any indication that it was sideswiped. Rather, the Fiera's damage appeared more of a head on collision.

Further, after the accident, the Fiera was found on the other side of the Sandawa Road, opposite the lane taken by the Bus. If the Fiera was on full stop at the time of the mishap, how was it able to cross the junction? The plaintiffs-appellants maintain that the Fiera got stuck to the Bus and was dragged to the other side of the Sandawa Road. However, logic dictates that this is highly improbable. It bears stressing that if the Fiera, if indeed on a stop position, was dragged by the Bus, the Fiera should have been thrown off on the right side of the Sandawa Road and not on the left side of Sandawa Road. This is because the impact was on the right side of the bus. How could the Bus throw off the Fiera from its right side to the left by merely dragging it? Unless the Fiera was also moving at that time, the plaintiffs-appellants' contention is hardly plausible.

On the contrary, what is sufficiently shown is that the Fiera hit the rear portion of the Bus. The gravity of the collision caused the Fiera's fender/grill to stick on the Bus thereby dragging the Fiera for a moment, and when the latter was freed, it circled towards Sandawa Road's left lane. This is what the witnesses testified to when they said they saw the Fiera circling around before hitting the gutter. Because of the impact, the Fiera circled clockwise landing on the left side of the Sandawa Road. This explains how the Fiera's driver was thrown out of the vehicle landing also on the left part of the Sandawa Road. Naturally, the person inside a vehicle which was swiftly turning clockwise is likely to be thrown off on the left side. The fact that the Fiera rammed into the Bus would not necessarily entail that the Fiera would bounce back to its previous direction because again, the Fiera got stuck to the bus.

Section 42, Article III of RA 4136[14] provides that when two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

At first glance, the Bus, being the vehicle on the left, should have yielded the right of way to the Fiera. However, it is worthy to note that the Fiera was still about 30 meters from the crossing when the driver of the bus saw it,

thus, the vehicles were not actually approaching the intersection at the same time. The Fiera was still at a distance that could have allowed the Bus to ply the crossing. As proven, the bus was more than half way in crossing the junction when it was hit on its rear. The Bus had already entered the intersection. The driver of a vehicle approaching but not having entered an intersection shall yield the right of way to a vehicle within such intersection.[15] Accordingly, the Fiera driver should have yielded the right of way to the bus driver considering that the Bus was already on the verge of crossing the intersection at that time.

In the case of *Caminos v. People*,^[16] the Supreme Court declared that the statutory right of way rule under Section 42 of our traffic law applies only where the vehicles are approaching the intersection at approximately the same time and not where one of the vehicles enter the junction substantially in advance of the other. The vehicle first entering the intersection is entitled to the right of way and it becomes the duty of the other vehicle likewise approaching the intersection to proceed with sufficient care to permit the exercise of such right without danger of collisions.^[17]

Although it is said that "vehicles approaching the intersection at the same time" does not necessarily depend on which of the vehicle enters the intersection first but rather it is determined by the imminence of collision when the relative distances and speeds of the two vehicles are considered,^[18] in the case before Us, We find that the bus driver exercised reasonable prudence in thinking that a distance of 30 meters was enough for him to safely cross the intersection. Besides, as held in the aforementioned case of *Caminos*, the rule requiring the driver on the left to yield the right of way to the driver on the right on approach to the intersection, no duty is imposed on the driver on the left to come to a dead stop, but he is merely required to approach the intersection with his vehicle under control so that he may yield the right of way to a vehicle within the danger zone on his right. He is not bound to wait until there is no other vehicle on his right in sight before proceeding to the intersection but only until it is reasonably safe to proceed.^[19]

The Fiera is not exempt from any responsibility for any driver approaching the intersection is generally under duty to be vigilant and to have the vehicle under control as to be able to stop at the shortest possible notice. He must look for vehicles that might be approaching from within the radius that denotes the limit of danger.^[20] In the case at bench, it was apparent that the Fiera driver failed to slow down upon approaching the intersection causing the collision. Analogously, in the case of *Heirs of Completo and Abiad v. Albayda, Jr.*,^[21] the Supreme Court ruled against the petitioner finding that he did not slow down even in approaching the intersection causing the accident against the respondent who then had the right of way considering that he reached the intersection ahead of the petitioner.

All told, the plaintiffs-appellants fell short in proving the defendants-appellees' culpability. Consequently, there is nothing to sustain in their claim of damages.

Second error.

Anent the issue of attorney's fees, We find for the plaintiffs-appellants. A close perusal of the RTC's decision shows that the award was only made in the decretal portion of the decision without stating its basis in fact and in law. Nevertheless, a legal service contract was proffered by the defendants-appellees. However, We find that it is not sufficient to uphold the award. It has been settled that no premium should be placed on the right to litigate.^[22] There was no adequate showing that the requirements in Article 2208 of the Civil Code are present to warrant the award of attorney's fees.

In *Philippine National Construction Corp. v. APAC Marketing Corp.*,^[23] the Supreme Court discussed:

"...attorney's fees are not awarded as a matter of course every time a party wins. We do not put a premium on the right to litigate. On occasions that those fees are awarded, the basis for the grant must be clearly expressed

in the decision of the court.

We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in the dispositive portion of their decisions. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award."

WHEREFORE, the instant appeal is partly GRANTED. The March 13, 2003 Decision of the Regional Trial Court, Branch 13, Davao City in Civil Case No. 21,997-93 is AFFIRMED with MODIFICATION. The award of attorney's fees is DELETED.

SO ORDERED.

[*]Borja,(Acting Chairperson), and Perez, JJ., concur.

[*] Designated Third Member vice J. Camello, per Raffle dated June 18, 2014

[1] Rollo, pp. 116-125.

[2] Records, p. 115.

[3] Records, pp. 1-4.

[4] Records, pp. 16-21.

[5] TSN, May 18, 1994, pp. 10-11.

[6] Records, p. 122.

[7] TSN, February 21, 2000, p. 10.

[8] Ibid.

[9] TSN, August 15, 2000, p. 10.

[10] TSN, December 12, 2000, p. 10.

[11] TSN, December 12, 2000, p. 8.

[12] Ibid.

[13] TSN, March 6, 2001, p. 8.

[14] An Act to Compile the Laws Relative to Land Transportation and Traffic Rules, to Create a Land Transportation Commission and for other purposes.

[15] Ibid.

[16] G.R. No. 147437, May 8, 2009.

[17] Ibid.

[18] Ibid.

[19] Supra.

[20] Supra.

[21] G.R. No. 172200, July 6, 2010.

[22] Lapanday Agricultural and Development Corp. v. Angala, G.R. No. 153076, June 21, 2007.

[23] G.R. No. 190957, June 5, 2013.

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