

HEIRS OF BASILIO SUAREZ, REPRESENTED BY LEONARDO SUAREZ, JR., PLAINTIFFS-APPELLANTS, VS. VICTORY LINER AND FEDERICO SABAY, JR., DEFENDANTS-APPELLEES.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is an appeal filed by the plaintiffs-appellants Heirs of Basilio Suarez, represented by Leonardo Suarez, Jr. (“plaintiffs-appellants”), seeking a review of the Decision[1] dated June 21, 2012 rendered by Branch 75 of the Regional Trial Court (“RTC”) in Olongapo City, Third Judicial Region in Civil Case No. 143-0-05.

The material and relevant facts of the case, as culled from the record, are as follows:

Plaintiffs-appellants are the heirs of the victim of a vehicular incident, Basilio Suarez (“Basilio”).

Defendant-appellee Victory Liner Inc. (“Victory Liner, Inc.”) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is a common carrier engaged in the business of providing public transportation. Defendant-appellant Federico D. Sabay (“Sabay”) was employed as its bus driver at the time of the subject incident.

On June 10, 2003, at about 3:05 a.m., while defendant-appellee Sabay was driving a passenger bus owned by Victory Liner, Inc. with plate number CWA-378, he sideswiped Basilio. As the passenger bus was leaving the bus terminal and was turning right towards Epifanio delos Santos Avenue (“Edsa”), its right front wheel hit the victim which caused the latter's instantaneous death. Allegedly, wanting to catch the outgoing trip, Basilio was trying to board the bus.

On account of the untimely demise of Basilio, his heirs, herein plaintiffs-appellants filed a Complaint for Damages[2] with the trial court against Victory Liner, Inc. and its driver Sabay, which was docketed as Civil Case No. 143-0-05. They prayed that they be indemnified for the untimely death of Basilio Suarez, his lost earnings, funeral expenses plus moral and exemplary damages as well as costs of the suit.

In the complaint, it was alleged that the victim, Basilio, who was a nurse by profession, had been employed in such capacity from 1987 to 1995 in different companies. At the time of his death in 2003, he was engaged in stage, wedding and program designs and was earning around Sixty Thousand Pesos (P60,000.00) per month. Simultaneously, he was also in the process of securing a job abroad as a nurse. All this taken together, the plaintiffs-appellants asserted that they should be awarded in the amount of not less than Four Million Pesos (P4,000,000.00) for the loss of the earning capacity of the deceased.

Moreover, as a consequence of the alleged inexcusable negligence of the defendants-appellees which resulted in the untimely and unfortunate death of Basilio, the plaintiffs-appellants must be indemnified for the funeral expenses they had incurred in the amount of Three Hundred Thousand Pesos (P300,000.00). Furthermore, for the mental anguish, wounded feelings, moral shock and serious anxiety suffered by the plaintiffs-appellants, they likewise seek for the award of moral damages in the amount of Five Hundred Thousand Pesos (P500,000.00).

Lastly, to serve as a deterrent, the plaintiffs-appellants prayed for exemplary damages in the amount of Five Hundred Thousand Pesos (P500,000.00).

In their Answer, the defendants-appellees claimed that the bare allegations of the plaintiffs-appellants were baseless and unsupported. According to the defendants-appellees, the victim was running after the bus to board the same but, before he was able to reach the closed door, he bumped into its right front wheel and fell on the ground. As a consequence, he was run over by the bus.

The defendants-appellees likewise averred that, since the bus driver, herein defendant-appellee Sabay, already intended to leave the bus terminal and commence the trip, he had already closed the bus doors, clearly signifying that he was no longer allowed to pick up anymore passengers. As he was slowly maneuvering towards Edsa, his attention was focused on the on-going traffic of vehicles on his left side. Thus, upon noticing that the bus went through a hump which was rather unusual, he immediately stopped the vehicle to check. It was then that he saw a man, later identified as Basilio Suarez, lying next to the right front wheel.

On the part of defendant-appellee Victory Liner, Inc., it alleged that it was not liable for damages because, as an employer, they exercised the proper diligence of a good father of a family, both in the selection and supervision of its bus drivers.

The case proceeded to trial on the merits. Leonardo Suarez, Jr., and Adelaida Suarez, who were the brother and the mother of Basilio, respectively, testified together with Teofilo Deldio, Basilio's bookkeeper and PO3 Jessie Flores, the traffic investigator who was on-duty at the time of the incident. On the part of the defendants-appellees, Dorotea de Jesus and German Valencia, both employees of Victory Liner, Inc., testified on their behalves.

On June 21, 2012, the RTC rendered the assailed Decision dated June 21, 2012, the dispositive portion of which is cited herein as follows:

“WHEREFORE, judgment is hereby rendered DISMISSING plaintiff's complaint and defendant's counterclaim.

“SO DECIDED.”

In finding for the defendants-appellees, the trial court observed that there was no negligence on the part of defendant-appellee Sabay in driving the bus since the plaintiffs-appellants failed to prove the same by competent evidence. The lower court held that plaintiffs-appellants failed to discharge the burden of proof and that there was no presumption of negligence on the part of the bus driver. Based on the findings of the trial court, at the time of the fateful incident, no negligence could be attributed to the defendant-appellant Sabay as he had already closed the doors of the bus and was already leaving the bus terminal towards the highway to negotiate a right turn.

Undaunted, the plaintiffs-appellants filed this instant appeal raising the following errors purportedly committed by the trial court:

I.

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION WHEN IT HELD THAT THERE IS NO NEGLIGENCE ON THE PART OF VICTORY LINER, INC. AND ITS DRIVER, FEDERICO SABAY.

II.

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION WHEN IT HELD THAT THE PLAINTIFFS-APPELLANTS ARE NOT ENTITLED TO THE DAMAGES SOUGHT TO BE RECOVERED.

A fortiori, the primordial issue brought before us for resolution is whether or not it was the defendants-appellees' negligence which was the proximate cause of the death of the victim, Basilio Suarez.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant appeal to be devoid of merit.

The plaintiffs-appellants claim that, when death or damage is caused by the operation of a common carrier, there arises a presumption of negligence on the part of the common carrier and its driver. Given that Victory Liner, Inc. is a common carrier and that death occurred as a result of its operation, the defendants-appellees are presumed to be negligent.

Article 1756 of the New Civil Code provides as follows:

“ART. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.” (Emphasis supplied)

It is undisputed that Victory Liner, Inc. is a common carrier. Nevertheless, the presumption of negligence of common carriers in case of death or injuries in which the plaintiffs-appellants based their claim is applicable only to its passengers. Therefore, for the presumption to stand, the victim must first be considered as a passenger of the common carrier.

Based on the circumstances in the case at bench, the victim could not be considered as a passenger.

At the onset, it is worthy to note that, at the time of the mishap, the victim was running after the leaving bus. The bus doors had already been closed and the bus was apparently on its way out of the bus terminal. Before the victim could have actually stepped on the platform of the bus, he was already sideswiped.

Verily, by reason of the fact that the victim herein had not even proceeded to step nor stand on the platform of the bus, as the bus doors were shut closed, he could not be deemed a passenger of defendant-appellee Victory Liner, Inc..

Accordingly, the application of the law on common carriers is not warranted and the presumption of fault or negligence on the part of a common carrier in case of death of a passenger under Article 1756 of the New Civil Code is not availing. In this case, the law governing the relationship between the defendants-appellees and the victim is the law on quasi delicts.

The law on quasi delict provides for some presumption of negligence but only upon the attendance of some circumstances. Thus, Article 2185 provides:

“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.”

As applied in the instant case, evidence for the plaintiffs-appellants showed no adequate proof that the defendant-appellee Sabay was violating any traffic regulation. Hence, the presumption of negligence is not obtaining.

To support their argument that the defendants-appellees were negligent, the plaintiffs-appellants harp on the fact that Sabay was dismissed from employment by its employer, Victory Liner Inc., which was an indication of guilt.

Negligence has been defined as the failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury[3]. Under the law, a person who, by his omission, causes damage to another, there being negligence, is obliged to pay for the damage done[4]. As to what would constitute a negligent act in a given situation, the case of *Picart v. Smith*[5] provides us the answer, to wit:

“The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet pater familias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

“The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this provision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable, warrant his foregoing the conduct or guarding against its consequences.” (Emphasis supplied)

Now we ask the question. Could a prudent man running after a moving bus which is about to leave the bus terminal foresee harm upon himself as a result of such act? We view this in the affirmative.

For one, no prudent man, in the case under consideration, would fail to foresee harm as a result of the course that he actually pursued. Indeed, it is the duty of the actor, the victim herein, to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion borne of this provision, is negligence.

To be entitled to damages for an injury resulting from the negligence of another, a claimant must establish the relation between the omission and the damage. He must prove under Article 2179 of the New Civil Code that the defendant's negligence was the immediate and proximate cause of his injury.

Proximate cause has been defined as that cause which, in natural and continuous sequence unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred[6]. Proof of such relation of cause and effect is not an arduous one if the claimant did not in any way contribute to the negligence of the defendant. However, where the resulting injury was the product of the negligence of both parties, there exists a difficulty to discern which acts shall be considered the proximate cause of the accident. In *Taylor v. Manila Electric Railroad and Light Co.*[7], the Supreme Court set a guideline for a judicious assessment of the situation:

“Difficulty seems to be apprehended in deciding which acts of the injured party shall be considered immediate

causes of the accident. The test is simple. Distinction must be made between the accident and the injury, between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing to his own proper hurt. For instance, the cause of the accident under review was the displacement of the crosspiece or the failure to replace it. This produced the event giving occasion for damages — that is, the sinking of the track and the sliding of the iron rails. To this event, the act of the plaintiff in walking by the side of the car did not contribute, although it was an element of the damage which came to himself. Had the crosspiece been out of place wholly or partly through his act or omission of duty, that would have been one of the determining causes of the event or accident, for which he would have been responsible. Where he contributes to the principal occurrence, as one of its determining factors, he can not recover. Where, in conjunction with the occurrence, he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less a sum deemed a suitable equivalent for his own imprudence.” (Emphasis supplied)

Applying all these established doctrines in the case herein and after a careful scrutiny of the records, We find no compelling reason to grant the appeal.

The plaintiffs-appellants fault the defendant-appellee Victory Liner, Inc. for failing to implement safety measures in the bus terminal. The plaintiffs-appellants assert that the accident happened just in front of the Victory Liner, Inc. Cubao bus terminal. They contend that such failure was compounded by the fact that there were no sufficient lightings or warning signs and/or guards-on-duty that could have afforded the bus driver the opportunity to avoid such incidents, especially to passengers who intend to board the bus in a swiftly manner.

Corollary thereto, the bus driver should have seen the victim on his right side mirror while the latter was trying to signal him to stop. For the plaintiffs-appellants, Sabay's more than ten (10) years of experience as a provincial bus driver should have developed in him a sense of instinct in defensive driving. They submit that the defendants-appellees' gross negligence was the proximate cause of the fatal incident.

We do not subscribe to the said view. Applying the doctrine of proximate cause, the act of the victim in running after a moving bus which was about to enter a highway contributed to his own proper hurt. His act of attempting to board a moving bus which was about leave the bus terminal to enter a highway contributed to the principal occurrence which brought about the accident.

It is worth noting that, based on the Spot Report prepared by PO3 Jessie Flores, the victim was found lifeless under the Victory Liner, Inc. passenger bus, at the back of its right front wheel. PO3 Jessie Flores, who was the only witness who could give an account as to what had transpired during the incident, likewise testified that, before the victim was sideswiped by the defendant-appellee Sabay, the former was running after the leaving bus along Edsa which is a national highway.

Though it is the duty of common carriers of passengers, including common carriers by railroad train, streetcar or motorbus, to stop their conveyances for a reasonable length of time in order to afford passengers an opportunity to board and enter[8], this duty must be in accordance with existing traffic rules and regulations with respect to the designated loading and unloading zones. Since the passenger bus had already left the bus terminal and had proceeded to traverse a right turn towards EDSA, the defendant-appellee Sabay could not be deemed negligent in not affording the victim an opportunity to board the bus as the same was likewise a prohibited practice.

In the same vein, according to the testimony of PO3 Jessie Flores, the front wheels of the Victory Liner bus were already on the first lane of Edsa. The only conclusion that could be properly arrived at is that the passenger bus was already outside the bus terminal and the victim was positioned along the highway when he was sideswiped by the bus, a place where the victim should not be at in the first place. Definitely, our existing traffic rules and regulations prohibit loading or unloading of passengers along the highway.

We are mindful of the doctrine laid out in the case of *Dangwa Transportation, Co., Inc. v. Court of Appeals*[9] where it was held that the attempt of one to board a train or streetcar which is moving slowly is not negligence per se or as a matter of law. It ruled that an ordinarily prudent person would have made the attempt to board a moving conveyance under the same or similar circumstances. The fact that passengers board and alight from slowly moving vehicles is a matter of common experience which both the driver and conductor could not have been unaware of[10].

However, the facts of the afore-mentioned case would show that, at the time of the incident, the passenger bus was already on the highway and was on a full stop to make way for a passenger who wanted to alight the same. In addition, the door of the bus was opened, an invitation for the public to board the same. Further, the victim therein was already on its platform when the bus started to move which caused the latter to fall to the ground. Contrary to the instant case, the doors of the bus involved herein were already closed as it was leaving the bus terminal to slowly traverse towards the highway.

The following ruling made by the lower court is correct:

“On the issue of Sabay's negligence, the court notes that of the witnesses presented by the plaintiff, only that of PO3 Flores has some bearing on the proximate cause of Basilio's death. Although PO3 Flores did not actually witness the incident where the deceased was run over by the bus, his investigation nonetheless revealed that the bus driven by Sabay was already outside the terminal and about to turn to the south direction going towards Makati City. Specifically, the bus was already at EDSA when the incident occurred as the deceased run after the leaving bus.

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“The court cannot appreciate negligence on the part of Sabay in driving the bus. He was about to leave the terminal as in fact he was already on the highway negotiating a turn. The bus was prohibited from picking passengers on the highway which was the reason its doors were closed. In fact, there is no indication whatsoever that Sabay intended to pick up Suarez as a passenger as the bus leaves. It was not clear what Suarez was running after when the bus side swept him. Definitely, Suarez could not have intended to ride on Sabay's bus as it was bound for another destination while Suarez was on his way home to Subic, Zambales.”

Considering that the plaintiffs-appellants failed to adduce evidence that the defendants-appellees were the ones negligent, the latter cannot be made liable for damages.

Burden of proof is the duty of a party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases[11]. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiffs cause of action, but one which, if established, will be a good defense - i.e. an "avoidance" of the claim[12].

In this case, the plaintiffs-appellants claim that the bus driver and owner, defendants-appellees herein were liable for negligently operating the bus. For the plaintiffs-appellants, the claim constitutes their cause of action against the defendants-appellees which said plaintiffs-appellants must prove by preponderance of evidence. Therefore, the plaintiffs-appellants had the burden of proving defendants-appellees' negligence by the quantum of proof required to establish the latter's liability, i.e. by preponderance of evidence. Preponderance of evidence means that the evidence as a whole adduced by one side is superior to that of the other. This, unfortunately, the

plaintiffs-appellants failed to do -- hence, the dismissal of the plaintiffs-appellants' complaint by the trial court was justified.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant appeal. The Decision dated June 21, 2012 rendered by Branch 75 of the Regional Trial Court in Olongapo City in Civil Case No. 143-0-05 is hereby AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Elbinias and Paredes, JJ., concur.

[1] Records, Civil Case No. 143-0-05, pp. 594-602.

[2] Ibid, Complaint, pp. 1-6.

[3] Corliss v. Manila Railroad Company, L-21291, March 28, 1969, 27 SCRA 674, 680.

[4] Article 2176, New Civil Code.

[5] 37 Phil. 809, 813.

[6] Vda. de Bataclan, et al. v. Medina, 102 Phil. 181, 186.

[7] 16 Phil. 8, 29-30.

[8] Dangwa Transportation Co. v. Court of Appeals, G.R. No. 95582, October 7, 1991.

[9] G.R. No. 95582, October 7, 1991.

[10] Ibid.

[11] Paras, Rules of Court 448 (3rd ed. 1996).

[12] Ibid.

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