

SALVADOR BORGUETA, JOSEFINA BORGUETA & JOANNE FIDES OMEGA, PLAINTIFFS-APPELLEES, VS. CARLITO G. MACAUBOS, DEFENDANT,

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is an appeal from the Decision[1] dated November 22, 2005 rendered by the Regional Trial Court of Tacloban City, Branch 8 in Civil Case No. 7438.

Factual and Procedural Antecedents

From the records, the facts of this case are as follows:

At around 5:45 o'clock in the afternoon of February 6, 1987, defendant Carlito G. Macaubos, driver of defendant Pawing Milling Corporation was driving an Isuzu cargo truck bearing Plate No. HAA-327 and the same was traveling along Senator Enage Street coming from the direction of Justice Romualdez Street heading North or towards the direction of the Leyte Provincial Capitol Bldg. Upon reaching a portion of the road fronting the Oceanic Bldg., said truck hit two pedestrians who were walking at the side of the road fronting the Oceanic Bldg. The driver, defendant Macaubos, instead of stopping to help the victims, sped away and proceeded to T. Claudio Street. Said vehicle upon reaching the corner of T. Claudio and M.H. Del Pilar Streets, also hit a motorcab for hire traveling along M.H. Del Pilar Street on a South to North direction. The driver and passengers of said motorcab were injured and the motorcab, to quote the Police Investigator's Report, was "totally damaged" and defendant Macaubos, just like in the previous incident, also sped away. Said driver-defendant was later apprehended by the police around 8:30 in the evening of even date at the bodega of Ching Hong Commercial and was brought to the Police Headquarters for investigation.

Summons were served upon the defendants on August 17, 1987 but defendant Carlito Gemanes Macaubos could not be located so service of summons by publication was resorted to. Defendant Macaubos did not file any Answer, consequently, on Motion of the plaintiffs, defendant Macaubos was declared in default by the trial court on March 17, 1988.

The trial court conducted hearings on the application for Preliminary Attachment and thereafter, defendant-appellant Pawing Milling Corporation, filed its Answer on August 31, 1987. On June 17, 1988, plaintiffs-appellees filed a Motion for Admission of Amended Complaint with the Amended Complaint attached. Defendant Pawing Milling Corporation filed an Opposition on July 28, 1988. The Amended Complaint was admitted on October 13, 1988. Defendant-appellant adopted their Answer to the original complaint as their Answer to the Amended Complaint. The trial court conducted pre-trial.

Trial on the merits ensued.

Evidence for the plaintiffs-appellees

Plaintiff-appellee Joanne Fides V. Omega testified that when the incident occurred, she was a student at the U.P. College of Tacloban. As it was a first Friday, Omega and her friend, the deceased Maria Josefina (Joy) Borgueta decided to take a walk from U.P. Tacloban to the Sto. Nino church passing through Sen. Enage Street and Justice Romualdez Street. On or about 5:30 PM, plaintiff-appellee Omega and her companion were suddenly hit and bumped by a truck. The incident happened at the edge of the sidewalk between Footstep and Oceanic Building where the sidewalk is not paved and filled with trash. Omega further testified that shortly before they were hit, Joy was at the edge of the uncemented sidewalk while the witness was at the middle of the shoulder of the road when they were simultaneously hit by the same truck.

Witness Omega was rendered unconscious and that she regained consciousness two days later at the DZR Hospital, now the EVRMC, after undergoing surgery. When Omega woke up, she could not move because of her multiple injuries. The Medico-Legal Report containing the injuries sustained by witness Omega was marked as Exhibit "B"[2]. Witness Omega was hospitalized for three weeks. After her confinement at the DZR Memorial Hospital, Omega was brought to the Foundational Center for further therapy as she was bedridden and unable to move. Omega was then confined at the Center for one (1) month and was discharged only on April 8, 1987. Omega was brought home but continued her medication until she was able to stand on her own. Omega's medical expenses amounted to more or less P50,000.00 as shown in the summary of expenses[3] and receipts[4] presented in court. Omega testified that because of the accident, she suffered from mental anguish, sleepless nights, excruciating pain, physical fear and phobia, which, if quantified, will be equivalent to P400,000.00. Omega likewise testified that she had to discontinue her studies at U.P. although she was already graduating from her course of BSBA Major in Accounting. Also, at the time of the incident, witness Omega testified that she was scheduled to leave for the United States on April 17, 1987 and because she was confined in the hospital, she could not make it to her interview at the US Embassy on February 8, 1987 and thus, lost her opportunity to migrate to the United States for work, which lost opportunity is valued at P100,000.00. And because of the accident, witness Omega's family was constrained to engage the services of counsel and spent P50,000.00 as well as incurred litigation expenses in the amount of P50,000.00.

Plaintiff-appellee Salvador Borgueta took the witness stand and testified that the deceased victim, Josefina "Joy" Borgueta, was his daughter. Joy, at the time she died, was twenty-one years old[5]. Joy, according to her father, was a be medaled student and an over-achiever who graduated as one of the outstanding students of her elementary class in Palo Elementary School and a salutatorian when she graduated from St. Mary's High School[6]. The deceased graduated from the U.P. College of Tacloban with a Bachelor of Arts in Social Sciences Major in Psychology and thereafter, pursued a course in Masters of Public Management in the same university[7]. The witness Borgueta testified that at the time of the victim's demise she had already applied with GSIS and received a telegram notifying Villegas of a job interview. Borgueta had likewise pursued possible employment with Maritime Polytechnic[8] and Central Bank Regional Office[9]. At the time of her death, Joy was employed at the Philippine Information Agency as a writer in the Office of Media Affairs Regional Office No. 8[10] with a remuneration of P600.00 a month. Witness Borgueta testified that his deceased daughter was not sickly and had no vice and could have lived for another forty years and her income could have been P1,000.00 a month. As a consequence of their daughter's demise, witness Borgueta testified that they endured mental suffering in the amount of P500,000.00. As a consequence of the incident, Borgueta testified that they engaged the services of counsel and spent P50,000.00 and incurred litigation expenses in the amount of P50,000.00. Borgueta also testified that the Isuzu cargo truck that hit his daughter, bearing Plate No. HAA-327, is owned and operated by defendant-appellant Pawing Milling Corporation. The driver was defendant Carlito Gemanes Macaubos. Salvador Borgueta's testimony was corroborated by the testimony of his wife, the plaintiff-appellee Josefina Borgueta who also took the witness stand.

The third witness for the plaintiffs, Bernardino Leporada, testified that at around 5:45 in the afternoon of February 6, 1987, he was walking along Sen. Enage Street towards the direction of Justice Romualdez Street. When he was near Oceanic Bldg., witness Leporada saw an Isuzu cargo truck bearing Plate No. HAA 327 turning towards Sen. Enage Street from Justice Romualdez Street and it was running very fast. Witness Leporada testified that he was almost hit by the said truck but evaded it just in time but two other ladies were hit. He shouted at the truck driver to stop but the truck continued on its way and turned right to T. Claudio Street. Witness Leporada further testified that she saw that the two ladies that were hit by the truck were lying prostrate on the street and that one was dead while the other one was still alive. Witness Leporada hailed a tricycle and brought the lady who was still alive to the hospital. He later learned that the name of the lady who died was Maria Josefina "Joy" Borgueta while the lady that he brought to the hospital was Joanne Omega.

Dr. Angel Cordero took the witness stand and testified that he conducted an autopsy on the victim, Maria Josefina "Joy" Borgueta and issued a Medico-Legal Necropsy Report[11]. Dr. Cordero testified that the injuries of the deceased Borgueta were caused or resulted from a vehicular accident and the fatal injuries were those involving the victim's brain, to wit: (1) Fracture, complete, whole cranial vault with partial avulsion of the bone at the forehead; (2) Partial avulsion of the frontal portion of the brain substance. The cause of death of the victim is cardio respiratory arrest due to shock due to subarachnoid, subdural, epidural hemorrhage, multiple fracture involving the whole cranial vault and the right upper extremity as a result of vehicular accident. Dr. Cordero likewise testified that the driver of the Isuzu cargo truck, Clarito Gemanes Macaubos, was subjected to a laboratory examination and the specimen, consisting of one vial of the blood taken from Macaubos had 0.15% alcohol content and was presumably under the influence of liquor and with that level of alcohol in the blood, the person will be sluggish in his reflexes[12].

Witness Sofronio Hacbang testified that at the time of the incident, he was the Supervising Transportation Regulation Officer of the Land Transportation Office, Tacloban District Office. Witness Hacbang testified that the defendant-appellant, Pawing Milling Corporation, is the owner of one Isuzu cargo truck with Engine No. DH-100-4247N, with Chassis No. ED70-170485 with Plate No. HAA-329.

The last witness for the plaintiffs was SPO4 Emiliano Montiel who testified that the incident of February 6, 1987 was recorded in the blotter of the Tacloban City Police Station and entered as Entry No. 3862[13].

Evidence for the defendant-appellant

The defendant-appellant presented Rogelio Adelantado who testified that in the afternoon of February 6, 1987, at around 5:45, he was about to cross the street from Lee's Grocery to Orient Pearl when he saw a sideswiping incident wherein two girls were side swept by a truck. Witness Adelantado also testified that right before the incident, he saw the two girls laughing and making jokes as they were walking along Enage Street itself and not on the sidewalk designated for pedestrians. Adelantado testified that after the two girls were hit by the truck, the latter moved slowly on its way while witness Adelantado helped carry the girls to the tricycle which headed towards the hospital. The testimony of Adelantado was echoed by witness Cornelio Chan.

Witness Bernardo Cabigon testified that at the time of the incident, he was a manager at Pawing Milling Corporation which is engaged in the business of milling and selling rice. Witness Cabigon testified that he knows the defendant Macaubos as he was the one who interviewed Macaubos when the latter applied as driver. Cabigon testified that as part of the screening process, the defendant-appellant conducts background checks on their applicants. Witness Cabigon said that he called up government agencies to find out if Macaubos had any derogatory record. Finding none, Macaubos was hired three days after. Cabigon further testified that since the defendant corporation has other sister companies employing, more or less, thirty (30) drivers, they hold seminars

and lectures on safety and maintenance of the trucks every two months. Cabigon testified that the defendant corporation extended financial assistance to the Borgueta's in the amount of P9,000.00 and P5,776.00 to the Omega's.

The last witness for the defendant-appellant was Dominador Budano who testified that before the cargo of the truck driven by Macaubos was unloaded on that fateful day of February 6, 1987, said driver was in the warehouse of Chin Hong Commercial where witness Budano was a warehouseman. Budano testified that at around 3:00 o'clock in the afternoon on even date the truck could not be unloaded right away as there were other trucks that arrived ahead with cargoes that also needed to be unloaded. Thus, the driver, Macaubos had to wait a while and had snacks with the witness Budano until at around 5:00 in the afternoon when the unloading was finally finished and Macaubos went on his way.

Ruling of the RTC

The trial court ruled in favor of the plaintiffs-appellees finding all the elements of quasi delict under Art. 2176 of the Civil Code extant in this case.

The trial court further ruled that defendant-appellant Pawing Milling Corporation is liable for the act or omission of its driver, defendant Carlito/ Florentino Gemanes Macaubos, pursuant to Art. 2180 of the Civil Code which imposes solidary liability upon an employer for the damages caused by their employees.

Hence, on November 22, 2005 or after over eighteen (18) years, the trial court rendered judgment, the dispositive portion of which, states:

"WHEREFORE, premises considered, this Court finds for the plaintiffs and against the defendants. The defendants are therefore hereby ordered to pay jointly and severally the plaintiff Borgueta the sum of P500,000.00 as the estimated unearned income of the victim Maria Josefina "Joy" Borgueta and to set an example for public good, they are hereby directed to likewise pay the sum of P500,000.00 as moral damages; P100,00.00 as exemplary damages; P50,000.00 in civil indemnity; P50,000.00 actual expenses incurred during the wake of the victim less the P9,000.00 that defendant Pawing Milling Corporation had given and P50,000.00 as attorney's fees; and to pay the sum of P50,000.00 for the medical expenses of Joanne Fides Omega; P100,000.00 as moral damages and P50,000.00 in exemplary damages.

SO ORDERED."

Aggrieved by the trial court's ruling, the defendant-appellant corporation timely filed a Notice of Appeal[14], which was given due course by the trial court in its Order January 10, 2006[15]. On the other hand, the defendant Carlito Macaubos did not file a Notice of Appeal. Hence, in so far as he is concerned, the trial court's Decision against him has already become final and executory.

The records of this case was received by this Court on May 19, 2006. However, the transcripts of stenographic notes transmitted by the trial court were incomplete[16]. From the years 2006 to 2011, this case languished in the completion stage after the stenographers of the missing transcripts could no longer be located or have already died.

The records having been completed, this Court on September 16, 2011, issued a Notice to File Brief[17]. Defendant-appellant filed its Brief on March 19, 2012[18], while plaintiffs-appellees filed their brief on July 10, 2012[19]. This case was declared submitted for decision in a Resolution dated November 29, 2013[20].

On August 22, 2014, the counsel for plaintiffs-appellees filed a Notice of Change of Address requesting this Court to, henceforth, furnish the plaintiffs-appellees copies of all orders and other court processes through their counsel's new address.[21]

The appellant's contention

The defendant-appellant makes the following assignment of errors[22]:

I.That the trial court seriously erred in not finding that the principal, direct, proximate cause of the incident in question was the gross negligence and recklessness of Ma. Josefina V. Borgueta and Joanne V. Omega that resulted in the death of Ma. Josefina and physical injuries to Joanne Omega;

II.That the trial court seriously erred in not finding that defendant-appellant Pawing Milling Corporation had exercised and observed all the diligence of a good father of a family to prevent damage to persons and properties in the care, selection and supervision of its driver Florentino C. Macaubos in the performance of his responsibilities;

III.That the trial court seriously erred in deciding the case in favor of plaintiffs and against defendant-appellant and in awarding exorbitant, excessive and unreasonable amount of attorney's fees and damages.

The defendant-appellant corporation argues that the incident in question happened because of the victims' negligence and lack of care for their own safety. The incident in question would not have happened had Josefina Borgueta and Joanne Omega taken or passed on the cemented and elevated side walk from the Cabigon Building up to Oceanic Building at the corner of Justice Romualdez and Senator Enage Streets which has a length of 120 meters, more or less. Being college students the victims should have known better and not exposed themselves to danger. Instead, the victims chose to walk on left lane of the street instead of the elevated sidewalk, unmindful of moving vehicles exposing themselves to danger.

Thus, appellant argues, the proximate and direct cause of the injuries which resulted in the death of Josefina "Joy" Borgueta and the serious physical injuries of Joanne Fides Omega, was their own negligence and recklessness. They therefore, must bear the consequences of their own negligence.

Appellant corporation also argues that it cannot be held solidarily liable with its driver, Florentino Macaubos, since the appellant presented clear and convincing evidence that it observed all the diligence of a good father of a family in the selection, hiring and control of its employees, including the defendant Macaubos. Moreover, the defendant-appellant argues that the company exercised diligent and sufficient efforts in the control direction and supervision of its employees as it conducts periodic seminars and lectures for drivers to maintain clean records and maintain proper observance of traffic laws, rules and regulations to avoid vehicular accidents and at all times give due regard to the safety of lives and property.

The appellant likewise argues that the trial court's conclusion that the defendant Macaubos was under the influence of alcohol when the incident happened is not supported by evidence. Appellant points out that the trial court cannot rely on the testimony of Dr. Angel Cordero, Medico-Legal Officer of the PNP Crime Laboratory, that defendant Macaubos had 0.15 percent alcohol in the blood sample taken from the latter considering that there is no evidence on record to show that indeed the blood sample was taken from the defendant Macaubos.

Finally, the appellant contends that the damages awarded by the trial court was exorbitant and speculative at best. Moreover, plaintiffs-appellees did not present any evidence to prove or tending to prove that defendant-appellant acted in bad faith before, during and after the incident in question. In fact, the defendant-appellant corporation in good faith but without admitting liability for the incident, extended financial assistance to the victims and their families.

The appellees' contention

The appellees on the other hand contend that the evidence presented at the trial showed that the fault or negligence amounting to reckless imprudence was apparent on the part of defendant-driver Macaubos when he

drove the Isuzu cargo truck which hit and bumped Joanne Omega and ran over Maria Josefina Borgueta. It is not the fault or negligence of the two victims that caused their injuries and death. In the case at bar, the driver Macaubos was driving defendant-appellant corporation's truck in such a reckless manner, while it was traveling along Sen. Enage Street, a busy street, within the city proper of Tacloban City. Moreover, the evidence shows that the driver Macaubos was negligent by the mere fact that while at the time when the incident happened, he was driving without a valid license, in violation of traffic rules and regulations.

The appellees likewise argue that defendant-appellant corporation is liable solidarily with its employee, the driver Macaubos, for the latter's fault or negligence that resulted to the death of Maria Josefina Borgueta and the serious injuries of Joanne Fides V. Omega. It has been ruled that the tortious acts or negligence of its employees is primary and solidary. Direct and immediate, and not conditioned upon the insolvency of or prior recourse against the negligent employee.

Finally, the appellees contend that the trial court judiciously awarded damages to plaintiffs-appellees and ascertained the correct amount of damages. The appellees argue that their lives have been abruptly and painfully interrupted by the terrible incident that occurred on February 6, 1987. The Spouses Borgueta lost their beloved and youngest daughter, so dear and close to their heart. The life of plaintiff-appellee Joanne Omega, on the other hand, was changed completely because of the incident. All of these happened, the appellees argue, simply because the defendant Macaubos was at fault or negligent in recklessly driving an Isuzu cargo truck owned by defendant-appellant corporation, without a valid driver's license and while intoxicated with liquor, and because Pawing Milling Corporation failed to exercise due diligence in the selection and supervision of their employees including defendant Macaubos. Therefore, appellees contend, it is but just that after twenty-five (25) long years, plaintiffs-appellees be awarded the damages they are praying for in their Amended Complaint.

The Ruling of this Court

In negligence cases, the aggrieved party has the choice between (1) an action to enforce civil liability arising from crime under Article 100 of the Revised Penal Code; and (2) a separate action for quasi delict under Article 2176 of the Civil Code.[23] In the case at bar, plaintiffs-appellees Borgueta and Omega chose to institute a civil case based on quasi delict against the defendants. They sued defendant-appellant Pawing Milling Corporation for its vicarious liability for the alleged fault of its driver, the defendant Macaubos, who was then driving the Isuzu cargo truck bearing Plate No. HAA-327 at the time of the accident.

Art. 2176 of the Civil Code provides that 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. The fault or negligence must be established by a preponderance of evidence.[24]

After a careful review of the records, We do not find any cogent reason to disturb the findings of the court a quo.

In the case at bar, defendant Macaubos was driving appellant corporation's vehicle in such a reckless manner, while it was traveling Sen. Enage Street, a busy street within the city proper of Tacloban City, failing to drive at a reasonable speed, less so, take any precaution of slowing down for the safety of pedestrians along the said street.

The reckless manner by which defendant Macaubos drove the cargo truck was observed by witness Bernardino Liporada, who himself was almost run over by defendant Macaubos.

"Atty. Acsay:

Q: While you were this walking along Sen. Enage St. at about 5:45 in the afternoon of February 6, 1987, nearing the Oceanic Bldg., do you still recall what happened?

A: I saw a cargo truck turning towards Sen. Enage St., coming from J. Romualdez St.

Q: What type of truck was that which you saw coming from the direction of Justice Romualdez St. and turning towards Sen. Enage St?

A: It was an Isuzu type cargo truck.

Q: And what happened if any as soon as you saw this cargo truck turn towards Sen. Enage St. while you were nearing or approaching Oceanic Bldg.?

A: I saw the cargo truck coming from Justice Romualdez St. turning towards Sen. Enage St. running very fast.

Q: As it was running fast, what did you observe if any?

A: Knowing that the truck was running fast, I evade from it.

Q: So, what did you do?

A: When I saw that the truck was coming from Justice Romualdez St. was turning towards Sen. Enage which was running very fast I immediately escape to the left side in order that I will not be hit.

Q: Why did you escape?

A: Because I will be run over by the truck if I will not escape, because it was speeding towards Sen. Enage St.

Q: How did you escape?

A: I jumped.

Q: At about that time that you escaped to the left side by jumping to that direction, what happened?

A: In about three seconds, more or less, I heard that somebody was bumped behind me.

X x x

Q: And when you heard that somebody was bumped behind you, what did you do?

A: I turned my back and I saw two ladies.

X x x

COURT: Where did you see the two ladies?

A: The two ladies were on the road.

X x x

Q: You saw two ladies laying on the road, what was their position when you saw the two ladies laying on the road?

A: They were on the ground frustrate (prostrate).

Q: What did you observe aside from the two ladies laying prostrate on the road?

A: I saw that the other one was already dead and the other lady was still alive.

Q: And what or how about the cargo truck which you said was running fast? What did it do on that precise time?

A: What I did, I shouted to the driver of the truck to stop.

Q: Why did you stop?

A: I wanted him to stop the truck.

Q: And did the driver stop and heed to your shout?

A: No, it continued to run."[25]

During the trial of this case, and now in this appeal, the defendant-appellant corporation, has attempted to escape liability by shifting the blame from the defendant driver Macaubos to the two victims Josefina Borgueta and

Joanne Omega. Appellants contend that had the two girls walked on the elevated sidewalk instead of on the left lane of the road, they would not have been hit by the truck driven by defendant Macaubos.

In determining whether or not the trial court was correct in finding the defendant Macaubos negligent, this Court is confronted with the question: Did the defendant Macaubos in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? We find the trial court's findings to be sound and consistent with the evidence on record when it ruled, this wise:

"Defendant contends further that the two victims were careless as they were walking on the road, joking and laughing as they walked and that if there is anyone to be blamed for this incident, it is the victims and not the defendant Macaubos.

This Court noted that this area where the incident occurred is part of the commercial area of Tacloban City and there are so many people walking in the sidewalk. At 5:45 in the afternoon, as it is rush hour, pedestrians would even spill off to the street and walk there. Any driver worth his salt would naturally be extra careful while driving at this area at such hour. In case of an obstruction in his path, he is duty bound to sound his horn and even stop to prevent mishaps that will endanger the life and limb of pedestrians. Fail to do this and you are negligent.

From the evidence presented, the driver-defendant Carlito Gemanes Macaubos clearly failed to exercise the due diligence expected of him considering the place and hour where he was driving. It therefore does not matter where the pedestrians/victims were walking when the mishap took place. From the testimony of the witnesses, both the plaintiffs and the defendants, Macaubos did not sound his horn and neither did he stop. In fact, even after hitting the victims, he proceeded on his way to T. Claudio Street and even hit a motor cab causing injuries to the driver and passengers of the latter vehicle (Exhibit "EE")."[26]

The test in determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: would a prudent man, in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued. If so, the law imposes a duty on the action to refrain from that course or to take a precaution against its mischievous results and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by ignoring of the admonition born of this prevision, is the constitutive fact of negligence.

Moreover, Art. 2185 of the Civil Code provides that 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. In this case, the defendant driver Macaubos, at the time of the incident, was driving without a license as certified to by the Land Transportation Office Tacloban Licensing Center (Exhibit "EE-4"[27] and "BB"[28]) that the Driver's License No. PL-1824578 given by Macaubos does not belong to him but to one Antonio G. Tan.

The Court notes that the defendant-appellant did not present the driver Macaubos, the best person who could have given testimonial evidence to rebut the presumption of negligence under Article 2185 or explained why he was unable to at least sound the cargo truck's horn or avoid hitting the victims Josefina Borgueta and Joanne Omega.

From the foregoing, by preponderance of evidence, We find that defendant driver Macaubos was at fault and negligent.

Proceeding from this, the court a quo correctly found defendant-appellant corporation liable for culpa aquiliana or quasi delict.

It is undisputed that the defendant corporation is the owner of the Isuzu cargo truck bearing Plate No. HAA-327 which figured in the accident, and that the defendant-appellant corporation was also the employer of defendant driver Macaubos. Since driver Macaubos was negligent and reckless while acting within the scope of his assigned

tasks, defendant-appellant Pawing Milling Corporation is presumed by law to be also negligent in its selection and supervision of driver Macaubos. It can only rebut this presumption by presenting evidence that the appellant corporation exercised that level of diligence required of him.

The law requires that an employer observe all the diligence of a good father of a family.[29] In *Yambao v. Zuniga*[30] cited in the case of *Estacion v. Bernardo*,[31] the Supreme Court had clarified the meaning of the diligence of a good father of a family, viz:

"The 'diligence of a good father' referred to in the last paragraph of the aforecited statute means diligence in the selection and supervision of employees. Thus, when an employee, while performing his duties, causes damage to persons or property due to his own negligence, there arises the *juris tantum* presumption that the employer is negligent, either in the selection of the employee or in the supervision over him after the selection. For the employer to avoid the solidary liability for a tort committed by his employee, an employer must rebut the presumption by presenting adequate and convincing proof that in the selection and supervision of his employee, he or she exercises the care and diligence of a good father of a family. x x x

Petitioner's claim that she exercised due diligence in the selection and supervision of her driver, Venturina, deserves but scant consideration. Her allegation that before she hired Venturina she required him to submit his driver's license and clearances is worthless, in view of her failure to offer in evidence certified true copies of said license and clearances. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the rules of evidence. x x x

In any case, assuming *arguendo* that Venturina did submit his license and clearances when he applied with petitioner in January 1992, the latter still fails the test of due diligence in the selection of her bus driver. Case law teaches that for an employer to have exercised the diligence of a good father of a family, he should not be satisfied with the applicant's mere possession of a professional driver's license; he must also carefully examine the applicant for employment as to his qualifications, his experience and record of service. Petitioner failed to present convincing proof that she went to this extent of verifying Venturina's qualifications, safety record, and driving history. The presumption *juris tantum* that there was negligence in the selection of her bus driver, thus, remains un rebutted.

Nor did petitioner show that she exercised due supervision over Venturina after his selection. For as pointed out by the Court of Appeals, petitioner did not present any proof that she drafted and implemented training programs and guidelines on road safety for her employees. In fact, the record is bare of any showing that petitioner required Venturina to attend periodic seminars on road safety and traffic efficiency. Hence, petitioner cannot claim exemption from any liability arising from the recklessness or negligence of Venturina."

Though defendant-appellant corporation, through its former manager, witness Bernardo Cabigon testified that appellant corporation selected and supervised their employees with the diligence of a good father of a family, We find that the evidence on record show that the diligence exercised by the appellant corporation is wanting. The documentary evidence submitted by the defendant-appellant corporation consisting of, inter alia , certifications issued by the Office of the City Prosecutor of Tacloban[32], Certification issued by the Provincial Prosecutor of Leyte[33], Court Clearance issued by the Office of the Clerk of Court of the Municipal Trial Court in Cities of Tacloban City[34] and the Certification issued by the Office of the Clerk of Court, Regional Trial Court, Branches 6,7, 8 and 9, 8th Judicial Region[35] all point to the fact that defendant Macaubos has not been accused nor convicted of any crime before the said offices or tribunal, but it does not necessarily point to his competence as a driver when he was hired by the appellant corporation. Besides, the Court notes that all the foregoing certifications were all obtained by the appellant and issued between the years 1990 and 1991 or well after the complaint for damages was filed against Macaubos and Pawing Milling Corporation.

Under the law on quasi delict, defendant-appellant Pawing Milling Corporation, the employer of driver

Macaubos, is vicariously liable for damages sustained by plaintiffs-appellees resulting from the negligence of driver Macaubos.

Regarding the award of damages, We also find it to be proper and reasonable. Art. 2202 of the Civil Code provides that in quasi-delicts, the defendants shall be liable for all damages which are the natural and probable consequences of the act complained of. The damages suffered by plaintiffs-appellees for the death of Josefina Borgueta and injuries sustained by plaintiff appellee Joanne Omega were the natural consequences of that unfortunate incident. Moreover, the actual damages claimed by the plaintiffs-appellees have been duly proven by receipts presented in evidence before the trial court.[36] This sufficiently allows the award of actual damages. Finally, the award for attorney's fees and cost of suit is allowed under Art. 2208 of the same Code. We find that the amount awarded is just and equitable under the circumstances. However, the trial court's decision must be modified to include the legal interest on the amounts awarded, in keeping with the Supreme Court's ruling in the case of Leticia Tan, et. al. vs. OMC Carriers, Inc., et. al.[37], a case involving quasi delict, to wit:

In keeping with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, which held that:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from May 14, 2003, when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied."

WHEREFORE, this appeal is hereby DENIED for lack of merit. However, the Decision dated November 22, 2005 of the Regional Trial Court of Tacloban City, Branch 8 in Civil Case No. 7438 is hereby MODIFIED to include legal interest at the rate of 6% per annum on the amounts awarded reckoned from November 22, 2005,

when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

Furnish a copy of this Decision to all the parties, including the plaintiffs-appellees, through counsel, at the latter's new address.

SO ORDERED.

Maxino, P.A., and Francisco, R.C., JJ., concur.

[1] Penned by Hon. Salvador Y. Apurillo.

[2] Original record, page 516.

[3] Exhibit "C", pp. 243-244, original record.

[4] Exhibits "D" to "D-21", pp. 281-292, original record.

[5] Exhibit "I", page 232, original record.

[6] Exhibit "J", page 573, original record.

[7] Exhibits "M" and "O", pp. 574-575, original record.

[8] Exhibit "Q", page 622, original record.

[9] Exhibit "R", page 578, original record.

[10] Exhibit "T", page 579, original record.

[11] Exhibit "W", page 224, original record.

[12] Exhibit "X", page 225, original record.

[13] Exhibit "CC", page 585, original record.

[14] Original record, pp. 759-762.

[15] Original record, page 765.

[16] Rollo, pp. 14-15.

[17] Rollo, page 55.

[18] Rollo, pp. 75-99.

[19] Rollo, pp. 122-184.

[20] Rollo, page 196.

[21] The new mailing address of Atty. Phio L. Viovicente, counsel for plaintiffs-appellees is at L29 Joy Nostalg Centre, 17 ADB Avenue, Ortigas Center, Pasig City 1600.

[22] Rollo, pp. 81-82.

[23] Rafael Reyes Trucking Corporation v. People, G.R. No. 129029, 3 April 2000

- [24] See Section 1, Rule 133, Rules of Court
- [25] TSN, February 15, 1991, pp. 18-25.
- [26] Original record, pp. 753-754.
- [27] Original record, page 588.
- [28] Original record, page 584.
- [29] Article 2180 of the Civil Code
- [30] G.R. No. 146173, December 11, 2003, 418 SCRA 266, 271
- [31] G.R. No. 144723, 27 February 2006.
- [32] Exhibit "6", page 661, original record.
- [33] Exhibit "7", page 662, original record..
- [34] Exhibit "8", page 663, original record..
- [35] Exhibit "9", page 664, original record.
- [36] Exhibit "C", pp. 243-244, original record. Exhibits "D" to "D-21, pp. 281-292, original record."
- [37] G.R. No. 190521, January 12, 2011.

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