

CHONA BORBOR ASSISTED BY SPOUSES DANILO AND MARLYN BORBOR, PLAINTIFFS-APPELLEES, VS. ALBERTO IBASAN (DECEASED) SUBSTITUTED BY HIS WIFE ESTER IBASAN, LORENA H. CACDAC, BYRON H. C...

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS IS ON THE APPEAL filed by defendants-appellants Lorena Cacdac and Byron Cacdac from the Decision[1] dated August 31, 2011 of the Regional Trial Court, Branch 37, Lingayen, Pangasinan (RTC, in Civil Case No. 18420 for Damages.

THE ANTECEDENTS

On March 3, 2003, appellee Chona Borbor (Chona), a minor child of appellees spouses Danilo and Marlyn Borbor (spouses Borbor) was hit by an Isuzu mini bus with plate no. AVB-987 owned by appellants Lorena and Byron Cacdac (collectively, appellants), driven by Alberto Ibasan (Alberto), now deceased, along the National Highway at Brgy. Tonton, Lingayen, Pangasinan. As a result, Chona was confined at the hospital where spouses Borbor incurred the amount of P236,129.38 for hospital and other expenses. Appellants failed to pay the expenses incurred; hence, the complaint for damages.[2]

Alexander de Vera testified[3] that at around 1:00 in the afternoon of March 3, 2003, while waiting for a ride along the highway of Brgy. Tonton, Lingayen, Pangasinan, he saw, from a distance of about seven meters, an Isuzu mini bus with plate no. AVB 987 (mini bus), body number 5008 and with the logo, “B”, hit a girl and the girl was thrown onto the dirt road. He estimated that the mini bus was running at about 90 kph, and coming from Dagupan City going in the direction of Lingayen. The bus slowed down after hitting the girl but later on gained speed and left the scene. Together with some bystanders, he brought the girl, whom he later learned to be Chona, to the Sto. Niño Hospital. He went to the police station and gave his statement regarding the incident. He met Chona's father at the police station. He also learned that Alberto was the driver of the mini bus because he surrendered[4] to the police.

Dr. Jesus Roderick Tuazon (Dr. Tuazon)[5] attended to Chona and, after examining her, found that she suffered several injuries: pelvic retroperitoneal hematoma, centrally located (a collection of blood at the back side of the pelvic within the abdomen); peri-vesicular hematoma, non-expanding (a collection of blood around the urinary bladder); vaginal injury, grade IV, urethral injury (the entire vaginal area was lacerated and associated with urethral injury); and perirectal hematoma, non-expanding (a collection of blood around the rectum). Chona also suffered broken bones: symphysis pubis diastasis (pubic bones were separated as a result of trauma); fracture, superior and inferior pubic ramus (fracture at the front and back of pubic bones); ischial fracture; and comminuted fracture, (L) iliac bone (fractures of the pubic bone at the back). Chona's injuries could have caused death had

immediate medical treatment not been applied. The procedures done on her were: vaginal exploration, packing of bleeders, exploratomy; laparatomy, pelvic retroperitoneal inspection, tube cystomy; peritoneal lavage and peritoneal drainage.[6] Another surgery was undertaken by Dr. Raul Sabado, an orthopedic surgeon. Chona was hospitalized for 21 days.

Appellee Danilo testified[7] that he is the father of Chona. They spent P242,000.00 for Chona's hospitalization and medicine. They had to engage the services of a lawyer to file a case and spent P20,000.00 for attorney's fees and P500.00 per court appearance.

Appellant Lorena filed an answer[8] claiming that she is the sole registered owner of the mini bus but denied liability, claiming that Alberto was driving at a moderate speed and it was Chona who ran and crossed the highway without stopping. It should be appellees spouses Borbor who should be held responsible for the accident. Further, they were careful in choosing the driver of their buses. However, in the event that Alberto is found to be reckless, appellants should be entitled to a reimbursement of whatever they are made to pay from cross-defendant appellee Ester Ibasan (Ester), who substituted for her deceased husband, Alberto.

Ricardo Ramos Casil, conductor of the mini bus, testified[9] that they were on their second trip to Alaminos from Dagupan City when they met an accident along the highway at Brgy. Tonton, Lingayen, Pangasinan. They were cruising at a speed of 40 kph when he noticed, from a distance of 200 meters, a Mhel Bhen mini bus parked at the right side of the road. When they were almost on level with the parked bus, a girl suddenly appeared in front of the parked bus and started to cross the highway. By then, the mini bus had slowed to 20 kph. Alberto applied the brakes but was not able to avoid the girl and hit her with the right front portion of the bus. They stopped but since a lot of people had gathered with some of them throwing stones at them, they decided to proceed to the police station where Alberto surrendered.

Angelito Yalung, operations manager of Super Byron Express, testified[10] that after the accident, appellee Marlyn Borbor would go to their office to ask for financial assistance. Their cashier, with the approval of appellant Lorena, gave financial assistance to Marlyn out of pity and in order to pacify some of Chona's relatives who threatened to do mischief at their buses.

Franklin Gapasin (Franklin), an employee and driver-trainer of Super Byron Express testified[11] as to the qualification of Alberto as a driver. In March 1994, Alberto applied as an apprentice at the shop of Super Byron Express. After a month of apprenticeship learning the work of a mechanic, he became an apprentice bus conductor for another month. Then, Alberto became a regular bus conductor for three months. Alberto later applied for an apprenticeship as a bus driver. After three months' apprenticeship, Alberto became a regular bus driver. Company drivers undergo training every year, and are given certificates of completion. These certificates are in the custody of the company but were lost after the flood of 2001. In 2002, Alberto became a driver for the buses of Lorena Cacdac.

Charlito Gapasin, driver of a bus owned by Lorena, testified[12] that the drivers are trained with regard to road signs, and how to check and inspect bus engines.

Appellant Lorena testified[13] that she is the owner of five buses registered under her name including the mini bus involved in the accident. She asserted that Byron Cacdac and Byron Super Express are not owners of the mini bus.

Alberto was employed in 1994 as a conductor and after two years, as a bus driver. Alberto underwent the necessary trainings before he was hired as a bus driver. They also required him to submit a barangay clearance, police clearance and NBI clearance, diploma, certificate of training and a photocopy of his driver's license.

Alberto had not been involved in any mishap prior to March 3, 2003. When they learned of the accident, she immediately dispatched Angelito Yalung, their Operations Manager, to investigate and attend to the needs of their employees and the victim. She extended financial assistance to the victim in the amount of P38,250.00.[14] Their records were destroyed in the flood of 2002.[15]

In deciding the complaint for damages, the RTC considered two issues: (1) was Alberto Ibasan negligent in driving the bus that bumped the victim Chona Borbor?, and (2) If Alberto Ibasan was negligent, did defendants (now, appellants) fail in the exercise of supervision and selection over him?

The RTC found for appellees and disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered against defendants Est[h]er Ibasan, (appellants) Lorena Cacdac and Byron Cacdac; to pay the plaintiffs (appellees) jointly and severally, the following:

- actual damages in the amount of P203,810.13;
- moral damages in the amount of P50,000.00;
- exemplary damages in the amount of P20,000.00;
- attorney's fees in the amount of P20,000.00[.]

SO ORDERED.

The motion for reconsideration filed by appellants and cross-claimant Lorena was denied in the Order[16] dated December 9, 2011; hence, this appeal.

Appellants assign several errors to the RTC as follows:

A) THE TRIAL COURT ERRED IN APPRECIATING THE EVIDENCE IN FAVOR OF PLAINTIFFS-APPELLEES IN RULING THAT THE LATE ALBERTO IBASAN NEGLIGENTLY OR RECKLESSLY OPERATED THE MINI BUS AT THE TIME OF THE ACCIDENT.

B) THE TRIAL COURT ERRED IN APPRECIATING THE EVIDENCE IN FAVOR OF PLAINTIFFS-APPELLEES IN RULING THAT APPELLANTS ARE LIABLE FOR DAMAGES.

C) THE TRIAL COURT ERRED IN RULING THAT PLAINTIFFS-APPELLEES ARE ENTITLED TO ACTUAL EXPENSES DESPITE THE FACT THAT THEY FAILED TO PROVE THE SAME WITH SUFFICIENT OR PREPONDERANCE OF EVIDENCE.

D) THE TRIAL COURT ERRED IN NOT DISMISSING THE COMPLAINT OF PLAINTIFFS-APPELLEES AND IN REFUSING TO GRANT RELIEFS PRAYED FOR BY APPELLANTS.

E) THE TRIAL COURT ERRED IN NOT GRANTING THE CROSS-CLAIM OF CROSS-COMPLAINANT-APPELLANT LORENA CACDAC AGAINST CROSS-DEFENDANT ESTER IBASAN.

THE ISSUES

The issues in this case are: (1) whether Alberto's negligence was proven; (2) whether appellants have proven the exercise of the diligence of a good father of a family in the selection of their driver; and (3) whether appellant Lorena is entitled to her cross-claim against Alberto's widow, Ester Ibasan.

THE COURT'S RULING

The appeal is without merit.

We have reviewed the records of the case and found the appealed Decision in order.

First, the negligence of Alberto was established. As the RTC has aptly found:

From the extent of the injuries of Chona Borbor which were massive (Exhibit "G") and as testified to by Alexander De Vera who was an eyewitness to the bumping incident, that she was thrown towards the left side of the road, it can be believed that the bus was running at a fast clip of no less than 90 km/hr. For if the bus was only running at 20 km/hr and given that there were no other vehicles on the road except for the mini bus that was parked on the right side of the road, Alberto Ibasan could have easily avoided Chona Borbor by swerving away from her. And, if as claimed by Ricardo Casil, the bus was only running at a speed of 20 km/hr., at this speed, the mini bus was maneuverable and could have even swerved to the left to avoid Chona Borbor. Therefore, the truth lies in the testimony of witness Alexander de Vera who testified that he saw the mini bus running at no less than 90 km/hr. Alexander de Vera is a disinterested witness who happened to be at the same place at the same time of the accident as he was waiting for his ride going back to Dagupan City. xxx Besides, claiming that the bus was only running at 20 km/hr., Ricardo Casil's credibility has been rendered doubtful and self-serving. In his testimony on 15 May 2008, he testified that they were running at 40 km/hr... but when returning to the stand on 02 April 2009, he averred that they were only running at 20 km/hr.,... thus, clouding his trustworthiness. Too, the place of the incident is a highway with many houses. This being the case, it is quite obvious that the required maximum speed for a bus traversing a highway closely bordered by habitation should be less than 50km/hr. xxx Additionally, considering that the place is populated and not an open highway without habitation, Alberto Ibasan should have exercised greater caution than usual by anticipating that some pedestrians from the area might suddenly cross the road. This is particularly true where his view of the road was limited and obstructed by the presence of the Mhel Bhen bus and therefore he should have, upon approaching the same, either stopped completely or slowed down his mini bus to a point where he would be able to avoid any pedestrian who might be crossing the road. xxx

The prudence required of a driver when traversing a highway is laid down in Section 35 (a) of the Land Transportation and Traffic Code (RA 4136), as amended. xxx

xxx

... Worse, Alberto Ibasan failed to immediately lend a hand to the minor Chona Borbor after he bumped her. According to Ricardo Casil, they failed to help Chona Borbor as some people began to throw stones at them. This is self-serving as there is no corroborating evidence to support his claim. Alexander De Vera testified that Alberto Ibasan slowed down after hitting Chona Borbor but nevertheless continued driving leaving it to bystanders and himself to assist her (referral to TSNs and citations omitted).[17]

Articles 2176 and 2180 of the Civil Code apply. Thus:

ARTICLE 2176. 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.

ARTICLE 2180. 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.

xxx

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.

xxx

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.

Lorena argues that she has proven that she exercised the diligence of a good father of a family in hiring Alberto. In this regard, jurisprudence laid down the rule that the employer must not merely present testimonial evidence to prove that he observed the diligence of a good father of a family in the selection and supervision of his employee, but he must also support such testimonial evidence with object or documentary evidence. The reason for this is to obviate the biased nature of the employer's testimony or that of his witnesses.[18] To prove the exercise of due diligence of a good father of a family, Lorena testified that she required Alberto to submit several clearances and training certificates, as well as the testimonies of Franklin and Charlito Gapasin, her driver-trainers. However, aside from their bare testimonies, Lorena failed to present documentary proof, claiming that documents in this regard were lost or destroyed by flood. The Court cannot countenance self-serving assertions unsupported by independent evidence.

On the issue of the cross-claim against Alberto's widow, We find that the RTC did not err in dismissing the cross-claim against the widow, Ester Ibasan. In quasi-delicts, the liability of appellants-employers are primary, and not subsidiary. The case of *Victory Liner vs. Malecdan*[19] is on point, that:

Article 2180 provides for the solidary liability of an employer for the quasi-delict committed by an employee. The responsibility of employers for the negligence of their employees in the performance of their duties is primary and, therefore, the injured party may recover from the employers directly, regardless of the solvency of their employees. The rationale for the rule on vicarious liability has been explained thus: "What has emerged as the modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the tort of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large. Added to this is the makeweight argument that an employer who is held strictly liable is under the greatest incentive to be careful in the selection, instruction and supervision of his servants, and to take every precaution to see that the enterprise is conducted safely."

WHEREFORE, the appeal of defendants-appellants Lorena Cacdac and Byron Cacdac is **DISMISSED**. The Decision dated August 31, 2011 of the Regional Trial Court, Branch 37, Lingayen, Pangasinan, in Civil Case No. 18420 for Damages, is **AFFIRMED**. Costs against appellants Lorena Cacdac and Byron Cacdac.

SO ORDERED.

CERTIFICATION

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.

Dicdican, I.P., Chairperson and Elbinas, M.P., JJ., concur.

[1] Records, pp. 299-319.

[2] See Complaint dated August 14, 2003, *Ibid.*, pp. 2-4.

[3] TSN, September 29, 2005.

[4] TSN (SPO3 Rodolfo S. Sison), November 24, 2005.

[5] TSN, April 26, 2006.

[6] Medical Certificate, Exh. "G", records, p. 80.

[7] TSN, June 14, 2007.

[8] Amended Answer with counterclaim and cross-claim, records, pp. 43-8.

[9] TSNs, December 12, 2007, May 15, 2008, April 2, 2009 and May 21, 2009.

[10] TSNs, July 22, 2010 and October 7, 2010.

[11] TSN, November 3, 2010.

[12] TSN, December 8, 2010.

[13] TSN, March 10, 2011.

[14] See Exhibits "12" to "23", records, pp. 119-24.

[15] See RTC Decision, records, pp. 301-7.

[16] Records, pp. 329-30.

[17] See RTC Decision pp. 13-4.

[18] Raymundo Odani Secosa, El Buenasenso Sy and Dassad Warehousing and Port Services, Incorporated, vs. Heirs of Erwin Suarez Francisco, G.R. No. 160039, June 29, 2004.

[19] G.R. No. 154278. December 27, 2002.

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