

**BENIGNO C. GUTIERREZ AND DOMINGO N. BALISALISA,
PETITIONERS, VS. COURT OF APPEALS[] ELISEO G. BALOYO AND
SOLEDAD RAMOS DE BALOYO, RESPONDENTS.**

G.R. No. L-31611. November 29, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms the appealed judgment of the Court of Appeals granting private respondents a total award of P61,000.00 by way of actual, moral and exemplary damages and attorney's fees due to the tragic death in school of their nine-year old daughter as a result of the gross negligence of petitioners and their crane operators. In view of the clear lack of merit of the appeal, this decision is declared immediately executory upon its promulgation.

Respondents-spouses Eliseo G. Baloyo and Soledad Ramos de Baloyo filed a suit for actual, moral and exemplary damages arising from the death on March 21, 1964 of their daughter Edna Baloyo inside the school grounds of the A. Mabini Elementary School on Severino Street, Manila. They named as defendants petitioners Benigno C. Gutierrez and Domingo N. Balisalisa as contractor and project engineer, respectively, of the contract executed by the former with the Bureau of Public Works, undertaking the construction of the N. Reyes-Severino Drainage Main, Manila Flood Control and Drainage Project, Manila.

From the partial stipulation of facts at the pre-trial and evidence adduced at the trial, it is established that the workers of petitioner Gutierrez, under the supervision of co-petitioner Balisalisa whom he had engaged as project engineer of the construction job, started digging up Severino Street, at first by manual labor and later by means of a crane to speed up the excavation. The earth and mud dug up were scooped by the crane and dumped against the exterior side of the adobe stone fence of the A. Mabini Elementary School along the street. When the pile of earth and mud reached the height of the fence, the crane's steel scooper was used to press them down. Because of the heavy stress thus placed on the fence, a portion of it gave way and collapsed on March 21, 1964 between 2:30 and 3:00 o'clock in the afternoon.

Respondents' daughter Edna was then playing with other children inside the school grounds. When the adobe wall collapsed, she was hit and pinned down by the falling debris of the adobe stone wall and was buried underneath the piled up earth and mud which caved in. While she was rushed to the hospital, it was in vain for she died moments after the tragic mishap.

The trial court rendered judgment in favor of respondents as prayed for in their complaint ordering petitioners jointly and severally to pay them P50,000.00 as moral and exemplary damages, P6,000.00 as actual expenses, P5,000.00 for attorney's fees or a total sum of P61,000.00 and the costs of suit.

On appeal, respondent appellate court in effect affirmed the appealed judgment, breaking down the damages award, as follows:

"WHEREFORE, the appealed judgment, insofar as it orders the defendants to pay, jointly and severally, to the

plaintiffs the sum of P6,000.00 for actual damages and another P5,000.00 for attorney's fees and expenses of litigation, apart from judicial costs, is hereby affirmed, but the said judgment is modified as follows: defendants are ordered to pay, jointly and severally, to the plaintiffs the sum of P12,000.00 as indemnity for the death of Edna Baloyo, another sum of P12,000.00 for the mental anguish suffered by the plaintiffs by reason of the death of their daughter, and the sum of P6,000.00 for the physical pains suffered by the child Edna Baloyo before she died; and said defendants are also ordered to pay P10,000.00 each to the plaintiffs as exemplary damages, or in the aggregate sum of P61,000.00. The costs in this instance shall be taxed against the defendants-appellants in equal shares."

In their petition, petitioners would assign as error the appellate court's rejection of their defense of the non-existence of employer-employee relationship between them and the crane operators.

The contention has no merit. Respondent court correctly held that the defense of alleged non-existence of employer-employee relationship was never raised in the lower court and could not be raised or entertained for the first time on appeal.[1] Withal, respondent court nevertheless found that the evidence sufficiently established the existence of such employer-employee relationship between petitioners and the negligent crane operators, stressing that "the contract Exhibit B-8 between the Republic of the Philippines and defendant (petitioner) Gutierrez specifically stipulated 'That the party of the second part (referring to Gutierrez) hereby agrees to undertake complete construction of the N. Reyes-Severino Drainage Main, Manila Flood Control and Drainage Project, Manila, furnishing himself his own funds, labor, plant, equipments, materials and supplies needed therefor, x x x' (underscoring supplied). The evidence indisputably shows that the crane operator was actually operating and managing that heavy equipment in the construction site of the defendants in connection with their construction job. No amount of reasoning therefore can deny the naked truth that said operator was necessarily and actually working for the defendants. This is not to mention that under the contract it is the defendants who are supposed to supply themselves with labor."

Prescinding therefrom, the Court finds that petitioners' "specific" denial in their answer "for want of sufficient knowledge or information" of respondents' specific allegations in their complaint of the existence of such relationship[2] was an evasive and ineffective denial of matters plainly within their knowledge and as to which they could not logically or in good faith pretend ignorance. How could they claim lack of sufficient knowledge or information as to the express averment that the crane operators specifically named were "under their employ and/or direction, supervision and control" when these matters were peculiarly within their knowledge as the job contractor? Their ineffective denial therefore failed to properly tender an issue and the averment of relationship was deemed judicially admitted by them.

This is but in consonance with the procedural doctrine long established that "'An unexplained denial of information and belief of a matter of record, the means of information concerning which are within the control of the pleader, or are readily accessible to him, is evasive and is insufficient to constitute an effective denial. x x x'[3] and that 'the form of denial x x x adopted by the appellants, although allowed by the Rules of Court (referring to lack of sufficient knowledge or information) must be availed of with sincerity and in good faith, - certainly neither for the purpose of confusing the adverse party as to what allegations of the complaint are really put in issue nor for the purpose of delay.'"[4]

The other alleged errors that petitioners would assign against respondent court's judgment pertain to the amount and character of the damages awarded. The Court finds the contention to be equally without merit.

Respondent court correctly quoted with approval the basis of the trial court's award for moral and exemplary damages: "(T)hus, the negligence of the defendants has been clearly established by the evidence. Indeed, no evidence is necessary to show that the defendants were negligent in the performance of their obligation. They

ought to have known that it was not the right thing to do - to pile up the big volume of earth excavated against the wall, which was fragile, being made only of adobe stones held together by weak mortar and without reinforcements. The collapse, there-fore, of the said wall could reasonably be expected by any person of ordinary prudence, if not intelligence. The danger not only to the wall but also to anybody on the other side of the wall, being a school ground, could have been anticipated by the defendants herein and yet they failed to take the necessary precautions to avoid the same. For this omission on their part, they should be held res-ponsible for moral and exemplary damages. This is more so with respect to the contractor, Benigno C. Gutierrez, in order that other contractors similarly situated should be more careful in the per-formance of their contracts. It is a matter of public knowledge that there are important public works projects of the government that have been awarded to contractors, who are not reliable, if not irresponsible. To cite only a few, like the Nagtahan Bridge and the underpass and overpass complex near the City Hall, which had been awarded to the same contractor, but who abandoned the same. Unless something is done to u of these acts of negligence on the part of the contractors, public welfare will suffer".[5]

Respondent court in effect merely affirmed the trial court's award of P50,000.00 for moral and exemplary damages (in addition to P6,000.00 actual damages or expenses found to be duly proven and P5,000.00 attorney's fees) and under the undisputed facts of the case and the need of imposing exemplary damages by way of example or correction for the public good, the Court finds no reason or basis to set aside or modify the totality of the award, regardless of any question that may be raised as to respondent court's itemization (particularly, as to the item of P6,000.00 "for the physical pains suffered by the child Edna Baloyo before she died").

ACCORDINGLY , respondent court's judgment under review is affirmed in toto, with double costs against petitioners. In view of the clear lack of merit of the appeal, this decision is declared immediately executory upon its promulgation and respondents may forthwith secure from the court a quo the corresponding execution of judgment.

SO ORDERED.

Makasiar, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[*] Third Division composed of Jose S. Rodriguez, J., ponente, and Nicasio A. Yatco and Jose M. Mendoza, JJ., members.

[1] Respondent appellate court stressed that the only errors assigned by petitioners in their brief before it were:

"1. The lower court committed a grave error when it held that the adobe wall fell as a result of the negligence of the defendants; and

"2. The lower court committed a grave error in ordering the defendants to pay the plaintiffs the amount of P6,000.00 as actual damages; P50,000.00 as moral and exemplary damages; plus P5,000.00 as and for attorney's fees; and the costs of this action."

[2] Par. 3 of the complaint averred specifically:

"3. That on or about said date and at said place, Jose Canlas, Jr. and Crispulo Quinquini, both of whom were then also under the employ and/or direction, supervision, and control of said defendants Benigno C. Gutierrez and Domingo N. Balisalisa, operated jointly and in cooperation with one another the crane belonging to and/or being utilized by said defendant Benigno C. Gutierrez in said project x x x."

[3] Warner Barnes & Co. vs. Reyes, 103 Phil. 662.

[4] *Idem*, cited with other cases in *J. P. Juan & Sons, Inc. vs. Lianga Industries, Inc.*, 28 SCRA 807, 811.

[5] Italics supplied.

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