

SPS. VIRGILIO AND JULIANA AQUINO, PLAINTIFFS-APPELLEES, VS. TITA VLLLANUEVA, DEFENDANT-APPELLANT.*CV No. 76131, July 28, 2010*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/71c5c2dd793b/>**Court of Appeals**

Before us is an appeal[1] under Rule 41 of the 1997 Revised Rules of Civil Procedure from the Decision[2] dated June 10, 2002 of the Regional trial Court(RTC) of Baguio City, Branch 61, granting the complaint for damages in Civil Case No. 4059-R.

The Facts:[3]

The claim for damages was precipitated by a vehicular accident involving a Nissan Vanette[4] owned by herein Plaintiffs-Appellees Virgilio Aquino[5] (Virgilio) and Juliana Aquino (collectively, Aquino spouses), and a Sarao passenger jeepney[6] owned by herein Defendant-Appellant Tita Villanueva[7] (Villanueva) and driven by her employee, Rogelio Bandonill[8] (Bandonill).

On May 1, 1998, at around 9:30 in the morning, Virgilio was driving the Nissan Vanette and heading north along the National Highway at Brgy. Agat, Sison, Pangasinan. As the Nissan Vanette was slowing down, the passenger jeepney, driven by Bandonill in a reckless manner, hit the rear right side portion of the Nissan Vanette in the act of overtaking the latter. As a result, the vehicle of the Aquino spouses was severely damaged and the amount of Sixty-Four Thousand Three Hundred Pesos(Php64,300.00) was incurred for the repair of the same.

Demands to pay for the repair were made by the Aquino spouse on Villanueva as the owner of the passenger jeepney and employer of Bandonill. However, despite repeated demands, Villanueva failed and refused to heed the same. Hence, the filing of the complaint before the RTC on June 17, 1998 praying for actual, moral, and exemplary damages plus payment to them of attorney's fees and litigation expenses.

Villanueva, meanwhile, claims that it was Virgilio who was negligent in driving his vehicle. Villanueva narrates that in that morning, Bandonill was picking up and conveying passengers along his usual route (Pozorrubio[9], Pangasinan to Rosario, La Union. While traversing the National Highway at Brgy. Agat, Sison, Pangasinan and heading north, the passenger jeepney was trailing the Nissan Vanette. Suddenly, an Anfra vehicle, parked along the shoulder of the National Highway, went in front of the Nissan Vanette and into the highway proceeding towards the north direction. The

Nissan Vanette then swerved to its left in an effort to avoid hitting the Anfra vehicle, but was not fully able to do so since there approaching from the opposite direction. As the Nissan Vanette slowed down in the middle of the highway, the passenger jeepney bumped the former's rear right portion having no opportunity to avoid hitting it. Consequently, the passenger jeepney's front left portion was damaged and Villanueva spent Three Thousand Pesos(Php3,000.00) for repairs. By way of counterclaim, Villanueva asks for payment to her of actual damages, attorney's fees, and costs of suit.

The pre-trial was held on March 10, 1999. For failure to amicably settle the case, trial on the merits, thereafter, ensued. During the trial, Virgilio and Villanueva each testified and narrated their own versions of the incident.

After trial, the RTC rendered on June 10, 2002 a decision disposing the case as follows:

WHEREFORE, judgment is rendered for the plaintiff and against the defendant ordering the latter to pay the former the amount of P40,000.00 as actual damages and pay the cost[sic].

SO ORDERED.[10]

Aggrieved, Villanueva moved for reconsideration but the same was denied in the Order[11] dated July 16, 2002.

Hence, the present recourse.

The Issues:

In her appeal, Villanueva assigns the following as errors:

I. The regional trial court erred in awarding damages to the plaintiff[s]/appellee[s] despite its findings[sic] that there is no gross negligence on the part of the defendant.

II. The regional trial court erred in not holding that the defendant/appellant was not negligent in the hiring and supervision of her driver/employee and thus, is free from any liability that may arise by reason for tort.

III. The regional trial court erred in applying the doctrine of last clear chance and in not appreciating the fact that the proximate cause of the accident was the fault of the plaintiff[s]/appelle[s], Hence, no damage should be awarded to him[sic].[12]

Therefore, the pivotal issue for resolution is: whether or not the RTC was correct in holding Villanueva liable to pay the damages to the Aquino spouses.

This Court's Ruling:

Mainly, Villanueva asserts that she cannot be held liable for the damages incurred by the Aquino spouses. She asserts that there was no finding gross negligence committed by her driver; that the doctrine of last chance is not applicable in this case; and, that considering that her driver was never involved in any road accident or any traffic violation, it cannot be said that she was negligent in the hiring and supervision of her employee.

For their part, the Aquino spouses argue that for damages to be properly awarded, the negligence committed need not be gross. They maintain that Villanueva's drive negligent at the time of collision such that the vicarious liability of Villanueva, as employer, attaches.

After a painstaking review of the records of the instant case, we see no reason to reverse the decision of the RTC.

Settled is the that the findings of fact of the trial court are accorded great weight and respect since it had the unique opportunity to observe the witness firsthand and note the latter's demeanor, conduct, and attitude under examination.[13] It can, thus, be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy to belief.[14]

Absent any showing that the RTC's appreciation of the facts was flawed, we are bound by its assessment. This court will sustain findings unless it can be shown that the trial court ignored, overlooked, misunderstood, misappreciated, or misapplied substantial facts and circumstances, which, if considered, would materially affect the result of the result of the case.[15]

We find no such circumstances in this case. The RTC's analysis of the facts of the case is noteworthy. It succeeded in presenting a logical picture of the events on the day of the incident. The RTC observed that:

If we consider the claim of the plaintiff regarding the incident, it would appear that[the] defendant is trying to

overtake[the] plaintiff's vehicle under a portion of a[sic] National Highway with two yellow lanes in the middle of the road indicating that overtaking is prohibited. Since the defendant is violating a traffic regulation at the time, he is presumed to be negligent under the law. Hence, he is liable for the consequences of his act. However, this court is not convinced by the evidence presented to support this appreciation of fact by the plaintiff. More consistent with the evidence on record is the version of the defendant as to what actually transpired [,] especially the location of the damage of each vehicle as shown in the pictures. If it was true that defendant overtook the plaintiff's car but was disrupted by an incoming [sic] truck, the point of damage of [sic] the plaintiff's vehicle should have been on the rear left side or exactly at the center thereof. But since the damage incurred by the plaintiff's car is on its rear right side[,], and the damage of the defendants s on its left front side. The more logical fact is the claim of [the] defendant.

In spite of that, it is an error for the defendant to claim that[the] plaintiff was negligent. This so because[the] plaintiff[,], in fact[,], avoiding hitting an Anfra vehicle[,], which suddenly went into the highway[,], and avoiding such evil is not a negligent act. Granting that[the] plaintiff is negligent, the defendant has the last clear change to avoid causing damage to[the] plaintiffs car. The Supreme Court stated that the driver who had the last clear chance to avoiding the accident is deemed negligent[,], and drivers of vehicle[s] who bump the rear of another vehicle are presumed to be the cause of the accident unless contradicted by other evidence. The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him. *Raynera vs. Hiceta* 306 SCRA 102. Considering that the foregoing is merely the conclusion from[the] defendant's own admission in law[,], for its[sic] failure to rebut this presumption in law[,], and having shown[the] defendant's liability under Art. 2180 of the Civil Code, plaintiffs necessarily proved their case against the defendant.[16]

The RTC found that the Nissan Vanette was avoiding another vehicle(Anfra) which suddenly went in front of it, when it was hit on its rear right portion by the passenger jeepney. It concluded that based on the evidence presented before the court, Virgilio was not negligent. Assuming that he was negligent, then it was Bandonill, the driver of Villanueva, who had the last clear chance to avoid the mishap.

We agree with the RTC's assessment. The doctrine of last clear chance states that a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent, is considered in law solely responsible for the consequences of the accident.[17] In essence, where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligent brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising there from. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence.[18]

Since Bandonill was driving the rear vehicle, he had full control of the situation since he was in a position to observe the vehicle in front of him. Seeing that the Nissan Vanette tried to avoid another vehicle, which suddenly proceeded in front of the former, Bandonill was made aware of the danger ahead on the road. Yet, he failed to take precaution either by immediately stopping the passenger jeepney, or reducing its speed before proceeding northward. Hence, the collision occurred.

Furthermore, Bandonill could have avoided hitting the Nissan Vanette is he was not driving too near enough, because the passenger jeepney driven by Bandonill was unable to avoid the collision.

With respect to the liability of Villanueva as the employer of Bandonill, Article 2180 of the civil code of the Philippines explicitly provides;

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omission, but

also for shoes of persons for whom one responsible.

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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.

*** **

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.

(Emphasis Ours)

Relative thereto, Article 2176 of the same Code states that:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provision of this Chapter.

In this regard, Villanueva's liability is direct and immediate. Villanueva is presumed to be negligent in the selection and supervision of her employee by operation of law. This presumption may be overcome only by satisfactorily showing that she exercised the care and the diligence of a good father of a family in the selection and the supervision of her employee.

In the selection of prospective employees, the Supreme Court explained in *Safeguard Security Agency, Inc., et al. v. Tangco, et al.*[19] that:

...employers are required to examine them as to their qualifications, experience, and service records. On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulation for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as many be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions. To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence. (Emphasis supplied).

Villanueva alleges that she exercised due diligence in the supervision and selection of her employee. Aside from this statement, however, Villanueva did not proffer any evidence to show how she exercised due diligence in the supervision and selection of her employee. She also failed to show that there was continuous training and evaluation of the driver's performance. In other words, she failed to substantiate her allegation that she exercised due diligence in the supervision and selection of her employee. Hence, she is liable for the negligent act of her employee.

Turning now to the award of damages, We agree with the ratiocinations of the RTC, thus:

There is no showing that defendant acted with gross negligence, hence the claim for exemplary damages cannot be awarded by this Court Likewise, with reference to the provision of Art. 2208 and 2219 of the Civil Code, the claim for moral damages, attorney's[,] and litigation expenses cannot be granted.

As to the claim of actual damages, this court takes judicial notice of the common practice of people[in] in creating the amount of their actual expenses in the receipt with respect to the repair of the damage of their car

in order to claim for a higher amount from the insurance company of from the person causing the damage. Further, the document allegedly representing the actual cost of the plaintiffs is only an invoice which cannot be said to represent the actual amount paid by the plaintiff[s] for the repair of his[sic] vehicle. Since the plaintiffs were not able to fully prove their claim for actual damages to the amount[of] P64,300.00, this court has reason to reduce the same. Hence, the award of actual damages in the amount of P40,000.00 appears to be just and reasonable under the circumstances.[20]

Conclusively, therefore, in consideration of the foregoing, We find no error in the RTC's disposition so as to warrant its reversal.

WHEREFORE, the appeal is DENIED. The assailed Decision STAND. Costs against the defendant-appellant.

SO ORDERED.

Tolentino and Lopez[*], JJ., concur.

Appeal denied.

[1] Ruffled to the ponente on April 19, 2010 pursuant to the Court's zero backlog project.

[2] Records. Pp. 124-126.

[3] As culled from the records.

[4] Bearing Plate No. ADP-555.

[5] Of legal age, Filipino, businessman with residence at 641-C Magnolia St., Q.M. Subd., Baguio City; TSN, May 27, 1999, p. 2.

[6] Bearing Plate No. DDC-531.

[7] Of legal age, Filipino, businessman, with address at No. 28 Bobonan, Pozzorubio, Pangasinan; Pangasinan; TSN, August 7, 2001 P- 2.

[8] 57 yrs. old, and a resident of Brgy. Imbalbalatong, Pozzorubio, Pangasinan; Records, p. 83.

[9] Also spelled as Pozzorubio in the records.

[10] See Decision, p. 3; Supra, Note 2. Emphasis supplied in the decision. Bracketed insertion Ours.

[11] Records, p. 134.

[12] See Appellant's Brief, p. 3; Rollo, p. 12 Bracketed insertions ours.

[13] See People v. Banhaon, 476 Phil. 7, 25 (2004); People v. Awing, 404 815, 833 (2001).

[14] People v. Awing, Supra.

[15] Gomez v. Gomez-Samson, G.R. No. 156284, February 6, 2007, 514 SCRA 475, 495.

[16] See Decision, p. 2-3; Supra, Note 2. Emphasis and bracketed insertions Ours.

[17] See Engada v. CA, et al., G.R No. 140698, June 20, 2003. Emphasis Ours.

[18] See LBC Air Cargo, Inc. v. Court of Appeals, 241 SCRA 619, 624; Picart v. Smith, 37 Phil. 809; Pantranco North Express, Inc. v. Baesa, 179 SCRA 384, Glan People's Lumber and Hardware v. Intermediate Appellate

Court, 173 SCRA 464.

[19] G.R. No. 165732, December 14, 2006.

[20] Supra, Note 2 at p. 126. Emphasis and bracketed insertions Ours.

[*] Vice J. Ruben C. Ayson, who inhibited in the above-entitled case, per raffle dated July 23, 2010

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