

WILLIAM DAVID LASAM REPRESENTED BY ATTY. LEANDRO B. ECHAVEZ, HEIRS OF ELIZABETH TORRALBA, REPRESENTED BY MANASES TORRALBA-TRILLO, GREGORIA S. ECHAVEZ, AND EDWIN MITCHAO, PLAINTI...

Ponente: INTING, J.

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INTING, J.:

This is an appeal from the November 29, 2005 Decision[1] of the Regional Trial Court, Branch 5, Butuan City in Civil Case No. 5001 for damages and attorney's fees, the fallo of which reads:

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiffs as against the defendants, ordering the latter to pay the plaintiff the following mitigated damages, to wit:

1. For the death of Dorcas Lasam, to pay actual and compensatory damages in the amount of P100,000.00;
2. For the death of Elizabeth Torralba, to pay actual and compensatory damages in the amount of P50,000.00;
3. For the serious injuries suffered by Gregoria Echavez, to pay the actual damages in the amount of P30,000.00;
4. For the serious injuries caused to plaintiff Edwin Mitchao, to pay the actual damages in the amount of P8,000.00;
5. Attorney's Fees of P25,000.00; and
6. Cost of suit.

SO ORDERED."

The facts of the case are as follows:

On May 25, 1996 at about 5:30 p.m., a Mitsubishi Lancer Sedan (hereinafter referred as Sedan) with plate no. SDW 895 registered in the name of the Provincial Government of Sultan Kudarat was plying Kilometer 85 Road National Highway (Km.85 for brevity) at Brgy. Kinuskusan, Bansalan, Davao del Sur. On board the Sedan were the driver/plaintiff Edwin Mitchao and the other co-plaintiffs who were supposedly the governor's guests. The plaintiffs were going to Davao City to catch a flight to Manila. They were in convoy with another vehicle also loaded with other guests. When the Sedan was about to descend on the curve of the aforementioned road, Mitchao noticed a crane parked on the shoulder of the road opposite their direction. Suddenly, a Fuso passenger Jeepney (Jeepney), going towards the direction of Kidapawan, Cotabato, came running at a high speed. To avoid the parked crane, the Jeepney swerved its way to the lane of the the Sedan. Mitchao stepped on the brakes and blinked the car lights; but the Jeepney continued towards the Sedan hitting the latter's right side and pushing it to the other lane. The impact left the Sedan on the lane supposedly traversed by the Jeepney. The Sedan was already facing the direction going to Cotabato instead of Davao City. The collision not only damaged the car but also caused the deaths of Dorcas Lasam, Elizabeth Torralba and Nanie Cruz; and serious injuries to Gregoria Echavez

and Mitchao. Consequently, on March 25, 2000, the plaintiffs filed a complaint[2] for damages against herein defendants Conrado Salise and Oscar Selisana, the passenger Jeepney's driver and owner respectively.

On the other hand, the defendants averred that the Jeepney was traversing the ascending road of Km.85 at a moderate speed. Salise noticed a parked crane on the shoulder of the road. The crane encroached about two (2) feet of the highway from its shoulder. Salise stopped the Jeepney before reaching the crane to give way to two (2) pick-up vehicles with armed men on board. Seeing no other incoming vehicles, Salise went on his way. About 20 m. from the parked crane, Salise saw the Sedan speeding its way down the road crossing the yellow lines, zigzagging, and occupying the Jeepney's lane. The Sedan eventually bumped the Jeepney damaging the latter's left fender, tire and rim. The defendants filed a counter claim for damages against the plaintiffs.[3]

During the trial, the plaintiffs presented Jemuel Pomares who was also driving for the other guests at the time of the fateful incident. They were on board a Mitsubishi pick-up also traversing the same route of the Sedan in going to Davao. The pick-up was ahead of the Sedan about 30 to 60 meters. They were driving in convoy. While negotiating the curved road of Km.85, Pomares allegedly noticed a crane parked on the other lane encroaching about 2 feet of the highway. Suddenly, he met two (2) head lights at the middle of the road which prompted him to swerve to his right to avoid the collision. The vehicle was purportedly running fast and three (3) seconds later, he heard a loud thump. He stopped to look for a place to back up. Then he saw his companion vehicle already on the wrong lane and facing the direction where they came from; while the Jeepney was parked on the shoulder of the lane still facing the direction where it was heading. On cross-examination Pomares said that he passed by the crane first before the Jeepney.[4]

For the defense, SPO1 Rebomafel Asegurado from the Traffic Section of the PNP who conducted the accident investigation was presented. He attested that the subject road is not only inclined about 32 degrees but also has a sharp blind curve. From his investigation, Asegurado found that the point of impact was at the Jeepney's lane which was about 80 meters from the parked crane. The right side of the Sedan hit the Jeepney's left portion. After the accident, both the right tires of the Jeepney were already in the canal on the right lane; but the Jeepney still facing the direction where it was heading. On the other hand, the Sedan's two (2) front tires and the left rear tire were already at the right lane but the Sedan facing towards Kidapawan, the direction where the Sedan came from. Asegurado likewise attested that the Sedan's driver, Mitchao admitted that he was in a hurry then because they were trying to catch a flight and that it was him who actually bumped the Jeepney.[5] On cross-examination it was established that the Jeepney was running in an ascending manner while the Sedan was descending. Asegurado maintained that based on his investigation, the Sedan was running too fast going down the road; and that when its driver applied the brakes, it was already late so that the car turned and hit the Jeepney. Asegurado added that Governor Lemana of Sultan Kudarat also arrived at the scene and told him that they will just talk to the Jeepney operator to settle the case.[6]

The defense also presented the Jeepney passenger Policarpio Masacote who corroborated the defendants' claim that when they reached Km.85, the Jeepney driver saw the parked crane and stopped for a while to give way to two (2) pick-up trucks which were descending very fast from the Kidapawan direction. After the vehicles passed by, the driver proceeded to pass the parked crane. They were then in an ascending position. About 40 to 50 meters from the parked crane Masacote saw a Sedan speeding towards their direction. The Sedan was zigzagging and when its driver applied its brakes, the car turned around and bumped the Jeepney which was hit on its left side. The collision occurred on the Jeepney's lane.[7]

Likewise presented for the defense was the Jeepney driver Salise. He maintained that before the accident he already noticed the parked crane while he was still about 80 m. away and running at about 60 km./hr. He stopped when he was about ten (10) meters behind it because he saw a pick-up running fast from the other direction. After

the pick-up passed by, he moved the Jeepney ascending onwards passing by the crane; and that after plying about 20 meters at the rate of about 30 km./hr., he saw the red Sedan zigzagging and taking his lane. He flickered the lights but to no avail so that he swerved the Jeepney to the right towards the shoulder to avoid a collision. On the other hand, the Sedan driver applied the brakes but the Sedan only went in circle and bumped the Jeepney pushing it towards the canal.[8] On his cross-examination, Salise clarified that he did not encroach on the other lane because despite the parked crane, he can still pass by the road; and that he stopped before the crane just to give way to the vehicles he earlier saw which were speeding.[9]

Arnulfo Abapo, a resident of Km.85 allegedly witnessed the incident. Arnulfo Abapo resides about 30 m. from the curved section of the afore-mentioned road. On the fateful day, he was rolling ropes at the edge of the highway when he heard a screech from a vehicle about 20 meters from him. The vehicle was running fast taking the Jeepney's lane hitting the latter's front left side. Abapo averred that Mitchao admitted fault explaining that he was in a hurry to catch a flight; and that he was not familiar with the road.[10]

The RTC rendered the assailed decision and found that the plaintiffs' car was speeding at the time of the accident; that Mitchao did not reduce his speed notwithstanding the winding, curved, descending road, the heavy rain, and dark night with almost zero visibility. However, the RTC held that even if the plaintiffs' driver was negligent, the defendants could not be absolved from responsibility. The RTC did not believe that the Jeepney was able to stop before reaching the parked crane. Instead the RTC resolved that the Jeepney was also running at a fast speed despite the weather and road conditions and the parked crane. The RTC figured out that while the Jeepney was in the process of returning to its lane after avoiding the parked crane, the Sedan driver was about to engage the blind curve on the road but saw the Jeepney appear therefrom. The Sedan driver stepped on the brakes to avoid collision but lost control of the car which skidded and swerved to the other lane hitting the Jeepney which, at that time, has already completed the process of returning to its lane. The RTC held that the act of the defendants constituted the immediate cause of the injury while the plaintiffs' act of over speeding did not necessarily bring about untoward harm to the victims had it not been the defendant's act making the accident possible; and that the plaintiff's act was merely contributory.

Hence, this appeal by the plaintiffs with the following errors, to wit:

I.

THE HONORABLE COURT A QUO GRAVELY ERRED IN HOLDING THAT THE PROXIMATE CAUSE OF THE VEHICULAR ACCIDENT WAS THE NEGLIGENCE OF THE DEFENDANT/APPELLANT CONRADO T. SALISE, DRIVER OF THE FUSO PASSENGER JITNEY, IN PATENT DISREGARD OF, AND CONTRARY TO THE PHYSICAL EVIDENCE AND TESTIMONIES OF WITNESSES;

II.

THE HONORABLE COURT A QUO GRAVELY ERRED IN NOT HOLDING THAT THE ONLY PROXIMATE CAUSE OF THE ACCIDENT WAS THE GROSS NEGLIGENCE AND THE VERY RECKLESS MANNER THE DRIVER OF THE MITSUBISHI LANCER, PLAINTIFF/APPELLEE EDWIN MITCHAO, AND UNFORTUNATELY, IT PALPABLY FAILED TO APPRECIATE THE FOLLOWING INDICIA OF PLAINTIFF/APPELLEE MITCHAO'S GROSS NEGLIGENCE AND UNFORGIVABLE ERROR AS ESTABLISHED BY THE EVIDENCES PRESENTED BY THE DEFENDANTS/APPELLANTS IN THE COURT A QUO:

A. TESTIMONIES OF SPO1 REBORMAFEL ASEGURADO AND ARNULFO F. ABAPO THAT DEFENDANT/APPELLEE EDWIN MITCHAO, RIGHT AFTER THE ACCIDENT, ADMITTED TO THEM THAT HE WAS AT FAULT IN BUMPING AND HITTING THE FUSO PASSENGER JITNEY OF

APPELLANTS BECAUSE HE WAS DRIVING THE MITSUBISHI LANCER Sedan AT A FAST SPEED TO CATCH A FLIGHT AT THE AIRPORT IN DAVAO CITY, SUCH STATEMENT BEING A PART OF RES GESTAE MUST BE APPRECIATED AGAINST THE APPELLEES;

B. EDWIN B. MITCHAO WAS DRIVING RECKLESSLY AT HIGH-SPEED BECAUSE THEY NEED TO CATCH A FLIGHT AT THE AIRPORT IN DAVAO CITY;

C. THE TESTIMONY OF ARNULFO F. ABAPO STATING THAT THE MITSUBISHI LANCER Sedan WAS MOVING AT HIGH-SPEED IN A ZIGZAG MANNER WHICH INDICATES THE FACT THAT THE DRIVER, APPELLEE, EDWIN MITCHAO, HAS LOST CONTROL OF THE CAR WHICH EVENTUALLY CAUSED THE ACCIDENT;

D. THE FALLEN DEBRIS OF BROKEN GLASSES CAN BE FOUND ON THE RIGHT WAY LANE OF THE ROAD, ROAD RIGHT OF WAY OF THE FUSO PASSENGER JITNEY WHICH INDICATES THE POINT OF IMPACT AND SHOWED THE ILLEGAL ENCROACHMENT BY THE MITSUBISHI LANCER Sedan; AND

E. THE MITSUBISHI LANCER Sedan AFTER THE IMPACT WAS FACING TOWARDS THE MAKILALA-KIDAPAWAN-COTABATO DIRECTION, THE OPPOSITE WAY FROM WHERE IT CAME FROM, WHICH SHOWS THE FACT THAT AFTER THE APPELLEE EDWIN MITCHAO LOST CONTROL OF ITS SPEEDING CAR WHICH PROMPTED HIM TO APPLY A SUDDEN BRAKE THE CAR SWERVED, TURNED AROUND AND ILLEGALLY ENCROACHED ON THE ROAD RIGHT WAY LANE, CONSEQUENTLY BUMPING AND HITTING THE FUSO PASSENGER JITNEY; AND

III.

THE HONORABLE COURT A QUO ERRED IN HOLDING THE HEREIN APPELLANTS LIABLE FOR DAMAGES WHEN THE EVIDENCE PRESENTED IN COURT AND TESTIMONIES OF WITNESSES ESTABLISHED THAT THE PROXIMATE CAUSE OF THE VEHICULAR ACCIDENT IS THE GROSS NEGLIGENCE AND RECKLESS IMPRUDENCE OF PLAINTIFF/APPELLEE EDWIN MITCHAO IN DRIVING THE MITSUBISHI LANCER SEDAN.

The defendants-appellants basically asseverate that Mitchao negligently drove the Sedan when it bumped and hit the Jeepney; that the Sedan would not have swerved and skidded to the right lane had it slowed down, hence, his act is the proximate cause of the accident; and that Mitchao already admitted fault when he reported the accident to the authorities and such statement is considered as res gestae.

Per June 13, 2013 Resolution of this Court, the case was referred to mediation[11] and a compromise agreement was reached but only by and between the defendants-appellants and plaintiff-appellee Gregoria Echavez. Based thereon, a partial judgment was promulgated on January 6, 2014.[12] Meanwhile, the appeal remains with respect to the other plaintiffs-appellees.

Our Ruling

The appeal lacks merit.

We believe that the Jeepney driver saw the parked crane on the shoulder of the road they were traversing. However, We are not persuaded with the Jeepney driver's allegation that he stopped to give way to other incoming vehicles. What the evidence supports is the fact that the Jeepney drove past the parked crane encroaching part of the left lane, which the Sedan was navigating. We find incredible the Jeepney driver's claim that he could still pass on the road without invading the other lane. The pictures show that the lane was not wide enough to accommodate the Jeepney and the crane even if the latter only encroached two (2) feet of the road. Unless the Jeepney intrudes the other lane, it cannot pass through. This was aptly corroborated by Jemuel Pomares, who

testified that he saw the Jeepney in the middle of the road just before the accident. Thus, the Jeepney did not stop before the parked crane but instead went on to pass by its encroaching part of the left lane.

Nevertheless, the evidence establishes that the Jeepney was able to return to its appropriate lane when the collision happened. Such conclusion is evident on the fragments found on the right lane of the road which show that it was the Sedan that went unto the right lane (Jeepney's lane) and collided with the Jeepney. Had the impact been on the left lane (Sedan's lane) which was allegedly encroached by the Jeepney, the debris would have been found on that part of the road. The location of the debris strongly proves where the collision transpired. This also finds support in the witnesses' recount of events saying that the Sedan invaded the Jeepney's lane. We find no reason to doubt the testimonies of the witnesses. No bias or ill-motive was imputed to them. Further, the investigator's testimony should also be given credence absent evidence to the contrary. In the absence of such ill motive, the presumption of regularity in the performance of his official duty must prevail.[13] The investigator maintained that the impact occurred on the right lane and further alleged that it was the Sedan driver who was at fault. The pictures and the sketch corroborate the investigator's findings. Moreover, the collision happened 80 meters from the parked crane. Such distance already gave the Jeepney driver ample time to return to its appropriate lane before the accident occurred. Hence, it is not far-fetched that the Jeepney was already able to return to its lane at the time of the crash.

However, it has been established that both drivers were negligent in driving their respective vehicles despite the curved road, and the dark rainy afternoon.

We find that the Jeepney driver was driving at a fast speed while traversing the highway. The very fact of speeding is indicative of imprudent behavior, as a motorist must exercise ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered, which will enable him or her to keep the vehicle under control and avoid injury to others using the highway.[14] Similarly, the Sedan driver's swift acceleration down the curved road makes him also negligent. As held in *Thermochem Inc. v. Naval*, [15] as the vehicle was moving downhill, the driver should have slowed down since a downhill drive would naturally cause the vehicle to accelerate.

Taking the foregoing into account, We find that the doctrine of last clear chance as expounded by the Supreme Court in *Picart v. Smith* [16] applies to the instant case.

The Supreme Court in the case of *Lapanday Agriculture and Development Corp. v. Angala*, [17] held:

"Since both parties are at fault in this case, the doctrine of last clear chance applies.

The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so is chargeable with the loss."

The Jeepney was already at its lane when the Jeepney driver and his passengers saw the fast approaching Sedan. Based on their testimonies, they were then about 20 to 50 meters away from the parked crane. It is crucial to note that the collision occurred 80 meters away from the parked crane, thus, considering that the Jeepney still had at least 30 meters before the place of impact, there was therefore, enough time for the Jeepney driver to stop the Jeepney or swerve it to its right before the Sedan could reach them. The Jeepney driver should not have insisted on his right of way because any prudent man would know that such act will put in peril not only his passengers but also the other vehicle. The Jeepney driver had the last clear chance of avoiding the collision but he failed to do so. There is a strong indication that the Jeepney driver was speeding its way thus, he was not able to stop the Jeepney; and when he swerved to its right it was already too late. This is contrary to the defendants-appellants'

claim that they were driving at only a speed of about 30 km/hr. for if that were true, the jeepney driver had all the occasion to stop or swerve the Jeepney and skirt the Sedan. As observed by the Supreme Court in *Filipinas Synthetic Fiber Corporation v. de los Santos*,^[18] if a vehicle was travelling in an allowable speed, its driver would not have a difficulty in applying the brakes.

In *Glan People's Lumber and Hardware, et.al. v. IAC*,^[19] the Supreme Court therein declared:

"Even, however, ignoring these telltale indicia of negligence on the part of Calibo, and assuming some antecedent negligence on the part of Zacarias in failing to keep within his designated lane, incorrectly demarcated as it was, the physical facts, either expressly found by the Intermediate Appellate Court or which may be deemed conceded for lack of any dispute, would still absolve the latter of any actionable responsibility for the accident under the rule of the last clear chance.

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The private respondents have admitted that the truck was already at a full stop when the jeep plowed into it. And they have not seen fit to deny or impugn petitioners' imputation that they also admitted the truck had been brought to a stop while the jeep was still thirty meters away. From these facts the logical conclusion emerges that the driver of the jeep had what judicial doctrine has appropriately called the last clear chance to avoid the accident, while still at that distance of thirty meters from the truck, by stopping in his turn or swerving his jeep away from the truck, either of which he had sufficient time to do while running at a speed of only thirty kilometers per hour. In those circumstances, his duty was to seize that opportunity of avoidance, not merely rely on a supposed right to expect, as the Appellate Court would have it, the truck to swerve and leave him a clear path."

Analogously, a thirty (30) meter distance is rational enough for a driver to take appropriate recourse to elude any unfavourable incident on the road unless the driver hastily drove the vehicle. Consequently, had the Jeepney been in a moderate speed when it was traversing the road after it had earlier passed by the parked crane and encroached the left lane, its driver would still have the opportunity to avoid the accident by stopping or swerving to its right. At a 30 meter distance, the Jeepney driver already saw the Sedan. This should have prompted him to take appropriate actions and halt the Jeepney. The Jeepney driver fell short in exercising reasonable care and prudence which is expected of him. The reckless and imprudent act of the Jeepney driver in failing to slow down to avoid the incoming Sedan despite notice thereof within reasonable time was the proximate cause of the fatal crash.

In the case of *Bustamanete v. CA*,^[20] the Supreme Court discussed:

"The doctrine, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. In other words, the doctrine of last clear chance means that even though a person's own acts may have placed him in a position of peril, and an injury results, the injured person is entitled to recovery. As the doctrine is usually stated, a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or that of a third person imputed to the opponent is considered in law solely responsible for the consequences of the accident.

Since damages, death, and injuries resulted from the accident the plaintiff-appellees are entitled to compensation but mitigated as the Sedan driver is also guilty of contributory negligence by encroaching the jeepney's lane and speeding. The determination of the mitigation of the civil liability varies depending on the circumstances of each case.^[21]

A perusal of the records shows no sufficient basis to award actual damages. For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon

competent proof and the best evidence obtainable by the injured party.[22] Credence can be given only to claims which are duly supported by receipts.[23] No adequate receipts were proffered by the plaintiffs-appellees. Nevertheless, this will not proscribe the award of temperate damages. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[24] In *Phil Tranco Services Enterprise, Inc. v. Paras*,[25] the Supreme Court ruled:

"In awarding temperate damages in lieu of actual damages, the CA did not err, because Paras and Inland were definitely shown to have sustained substantial pecuniary losses. It would really be a travesty of justice were the CA now to be held bereft of the discretion to calculate moderate or temperate damages, and thereby leave Paras and Inland without redress from the wrongful act of Philtranco and its driver."

Accordingly, herein plaintiffs-appellees Dorcas Lasam and Elizabeth Torralba are entitled to a mitigated temperate damages of P15,000.00 each, in lieu of the actual damages suffered by them which was not duly supported by receipts. In addition, they are also entitled to a mitigated death indemnity of P25,000.00. Edwin Mitchao is likewise entitled to temperate damages and We uphold the court a quo's award of P8,000.00. All other awards by the court a quo are sustained.

WHEREFORE, the instant appeal is DENIED. The November 29, 2005 Decision of the Regional Trial Court, Branch 5, Butuan City in Civil Case No. 5001 is AFFIRMED with MODIFICATIONS. The defendants-appellants are ORDERED to pay:

- The heirs of Dorcas Lasam temperate damages of P15,000.00 and indemnity for death of P25,000.00;
- The heirs of Elizabeth Torralba temperate damages of P15,000.00 and indemnity for death of P25,000.00;
- Edwin Mitchao temperate damages of P8,000.00;
- Attorney's fees; and
- Cost of suit.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Rollo, pp. 51-69.

[2] Records, pp. 1-7.

[3] Records, pp. 80-86.

[4] TSN, September 4, 2001.

[5] TSN, May 16, 2002, pp. 54-64.

[6] Records, January 21, 2003, pp. 239-249.

[7] TSN, May 16, 2002, pp. 81-87.

[8] TSN, May 16, 2002, pp. 94-105.

[9] TSN, May 16, 2002, pp. 255-257.

- [10] Records, July 1, 2002, pp. 143-151.
- [11] Rollo, pp. 132-133.
- [12] Rollo, pp. 156-164.
- [13] Espano v. CA, G.R. No. 120431, April 1, 1998.
- [14] Gabriel v. CA, G.R. No. 128474, October 6, 2004.
- [15] G.R. No. 131541, October 20, 2000.
- [16] G.R. No. L-12219, March 15, 1918
- [17] G.R. No. 153076, June 21, 2007.
- [18] G.R. No. 152033, March 16, 2011.
- [19] G.R. No. 70493, May 18, 1989.
- [20] G.R. No. 89880, February 6, 1991.
- [21] Dumayag v. People, G.R. No. 172778, November 26, 2012.
- [22] OMC Carriers, Inc. v. Nabua, G.R. No. 148974, July 2, 2010.
- [23] Ibid.
- [24] Article 2224, New Civil Code.
- [25] G.R. No. 161909, April 25, 2012.

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