

**REYNALDO LIZADA, SR., AND SANDRA BAQUILAR,
PLAINTIFFS-APPELLEES, VS. JAY ISAGAN AND INOCENCIO DELA
CRUZ Y BANDIES, DEFENDANTS-APPELLANTS.**

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before the Court is the Appeal[1] assailing the Decision[2] dated March 9, 2006 of Branch 15, Regional Trial Court, Roxas City (hereafter, the “court a quo”) in Civil Case No. V-058-06-2002, finding Jay Isagan and Inocencio Dela Cruz (hereafter, “defendants-appellants”) liable for Quasi-Delict.

The facts of the case are as follows:

Reynaldo Lizada, Sr. (hereafter, “Lizada”) and Sandra Baquilar filed the Complaint,[3] for Quasi-Delict before the court a quo. Named defendants were Jay Isagan (hereafter, “Isagan”) and Inocencio Dela Cruz (hereafter, “Dela Cruz”).

The Complaint alleged that on May 27, 2002, at about noontime, Fernando Baquilar (hereafter, “Baquilar”) was driving the Toyota Hi-Ace Van (hereafter, “van”) of Lizada to transport passengers from Caticlan, Malay, Aklan to Iloilo City. Upon reaching the National Highway of Barangay Aglalana, Dumarao, Capiz, Baquilar slowed down the van as the passenger jeepney (hereafter, “jeepney”) ahead of it stopped near the shoulder of the right lane of the road to fix its cargoes. With having enough clearance in the road to overtake, Baquilar maneuvered the van to overtake the parked jeepney. When the van had almost overtaken the passenger jeep, the bus driven by defendant-appellant Dela Cruz and owned by Isagan coming from the opposite direction was running at high speed. Baquilar flashed his headlight seeking clearance to proceed, and after passing the passenger jeep, he swerved towards the middle of the right lane of the highway to completely place the van at its rightful lane. The bus lost control which swerved to the rightful lane of the van and bumped the van at the middle portion of the left side with its (bus) front fender, pushing the van towards the jeepney near the shoulder of the right lane of the highway. As a result, Baquilar died on the spot and five (5) passengers of the van were pronounced dead on arrival at the Don Valerio Palmares Memorial Hospital in Passi City. The other passengers were injured and the total hospital bills assumed by Lizada was P615,589.64. The funeral expenses for the death of Baquilar also reached P97,000.00.

The Complaint prayed for: reimbursement to plaintiff-appellee Lizada for hospital expenses of the passengers (P615,589.54); funeral expenses of Baquilar (P47,000.00); repair of the van (P200,000.00); loss of income of the van at P1,000.00 a day; reimbursement to Sandra Baquilar for funeral expenses (P50,000.00); moral damages (P200,000.00); attorney’s fees (P100,000.00); and costs.

Defendants-appellants averred in their Answer[4] that on May 27, 2002, at about 1:25 o’clock in the afternoon, the bus driven by Dela Cruz and owned by Isagan was cruising at forty (40) kilometers per hour and had just passed the Iloilo-Capiz boundary. Dela Cruz saw the van driven by Baquilar about 100 meters away occupying the center lane. Dela Cruz flashed his headlight to warn the van of an incoming bus and slowed down the bus. The van went

back to its own lane which had a jeepney parked in its front. Upon seeing the van had returned to its lane, Dela Cruz continued to drive the bus. The van suddenly overtook the parked jeepney, went out of its lane and came towards the bus. Dela Cruz tried to apply brakes but it was too late. Defendants-appellants claimed that the fault is attributable to Baquilar, as the sketch plan prepared by the Dumarao police showed that the point of impact was within the lane of the bus driven by Dela Cruz, as the van encroached upon the lane of the bus. Isagan insisted that being the employer of Dela Cruz, he exercised the highest diligence in choosing and supervising his employees.

The Answer prayed for: moral damages (P50,000.00); attorney's fees (P10,000.00, and P1,000.00 per appearance); and litigation expenses (P50,000.00).

Trial proceeded.

On March 9, 2006, the court a quo issued the assailed Decision[5] in favor of plaintiffs-appellees and ordered both Dela Cruz and Isagan to reimburse Lizada and Baquilar for actual damages, and pay them both moral and exemplary damages, attorney's fees, litigation expense, and costs. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, Judgment is hereby rendered in favor of the plaintiffs, ordering the defendants jointly and severally:

- Plaintiff Reynaldo Lizada, Sr.:
- P1,192,929.45 as reimbursement for hospital expenses assumed at the Iloilo Doctor's Hospital, Iloilo City;
- P15,000.00 as reimbursement for funeral services to Fernando Baquilar paid by plaintiff Lizada, Sr. to the Porras Funeral Homes;
- P32,000.00 reimbursement for funeral services extended to Fernando Baquilar paid by plaintiff Lizada, Sr. to the Funeraria Dicon;
- P200,000.00 for the repair of the Toyota Hi-Ace Van;
- P365,000.00 representing loss of income of the Toyota Hi-Ace Van at P1,000.00 per day for one year from May 27, 2002.
- P200,000.00 as moral damages.
- For Sandra Baquilar:
- P200,000.00 as moral damages.
- For both plaintiffs:
- P100,000.00 as attorney's fees
- Costs of the suit.

SO ORDERED.

Hence, this Appeal, defendants-appellants making the following assignment of errors:

THE REGIONAL TRIAL COURT COMMITTED THE FOLLOWING ERRORS, AS FOLLOWS:

I

IN FINDING DEFENDANT INOCENCIO DELA CRUZ NEGLIGENT AND SUCH NEGLIGENCE WAS THE MAIN CAUSE OF THE VEHICULAR ACCIDENT ON MAY 27, 2002.

II

IN FINDING THAT DEFENDANT JAY ISAGAN FAILED TO EXERCISE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF HIS EMPLOYEE.

III

THE HONORABLE LOWER COURT ERRED IN ORDERING THE DEFENDANTS TO PAY JOINTLY AND SEVERALLY PLAINTIFF REYNALDO LIZADA, SR. P1,192,929.45 AS REIMBURSEMENT FOR HOSPITAL EXPENSES ASSUMED AT THE ILOILO DOCTOR'S HOSPITAL, ILOILO CITY; P15,000.00 AS REIMBURSEMENT FOR FUNERAL SERVICES TO FERNANDO BAQUILAR PAID BY PLAINTIFF LIZADA, SR. TO THE PORRAS FUNERAL HOMES; P32,000.00 REIMBURSEMENT FOR FUNERAL SERVICES EXTENDED TO FERNANDO BAQUILAR PAID BY PLAINTIFF LIZADA SR. TO THE FUNERARIA DICON; P200,000.00 FOR THE REPAIR OF THE TOYOTA HI-ACE VAN; P365,000.00 REPRESENTING LOSS OF INCOME OF THE TOYOTA HI-ACE VAN AT P1,000.00 PER DAY FOR ONE YEAR FROM MAY 27, 2002; P200,000.00 AS MORAL DAMAGES; FOR BOTH PLAINTIFFS P100,000.00 AS ATTORNEY'S FEES.

IV

THE HONORABLE COURT DID NOT CONSIDER ALL THE EVIDENCE PRESENTED BY THE DEFENDANTS-APPELLANTS.

Defendants-appellants argue that they should not be held liable for damages as it was the van which hit the bus as shown by the sketch of SPO2 Eddie Unato, which the latter testified to, as the point of impact of the two vehicles happened at the lane of the bus. The police blotter report also reflected that the cause of the accident was the sudden overtaking made by the van. Moreover, defendants-appellants claim that even the Office of the Provincial Prosecutor of Capiz dismissed the criminal case against Dela Cruz after finding that the accident was attributable to the negligence of Baquilar. And since Dela Cruz was not held liable, Isagan, being the employer should also not be held liable.

The heirs of Lizada[6] and Baquilar, on the other hand, claim that the court a quo was correct in its finding that the bus driven by Dela Cruz was the proximate cause of the collision of the vehicles. They insist that it is impossible for the van to drag the bus which was running downhill and it was the bus which was on the wrong lane when the collision happened. Moreover, plaintiffs-appellees posit that Isagan should be held severally liable with Dela Cruz as he failed to exercise the diligence required of him in the selection and supervision of his employee Dela Cruz. They assert that the court a quo is correct in its findings of fact as it considered the testimony of the eyewitness to the incident and the photographs taken at the scene.

The Ruling of the Court

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[7]

The test by which to determine the existence or negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. [8]

Proximate cause is determined by the facts of the case. It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have

occurred.[9]

After going over the records of this case, the Court is unable to sustain the findings of fact and conclusion reached by the court a quo. The Court finds that it was the negligence of Baquilar, the driver of the van as the proximate cause of the accident.

It is worth noting that photographs are in the nature of physical evidence-- a mute but eloquent manifestation of truth ranking high in the hierarchy of trustworthy evidence. When duly verified and shown by extrinsic evidence to be faithful representations of the subject as of the time in question, they are, in the discretion of the trial court, admissible in evidence as aids in arriving at an understanding of the evidence, the situation or condition of objects or premises, or the circumstances of an accident.[10] In this case, We give credence to the photographs taken by Alexander Azarcon as the latter testified that the pictures were faithful representations of the circumstances immediately after the accident.

It is a fact that the bus was going towards the direction of Kalibo, while the jeepney and the van was going towards Iloilo prior to the incident. However, after the incident the photographs showed that the van stopped in a perpendicular position to the road, with its front in the right lane while the end of its tail was in the middle of the road. The bus' front portion was attached to where the door of the van's driver and the passenger side behind the driver.

The evidence depicted that the van driven by Baquilar swerved and encroached on the lane of the bus to overtake the parked jeepney. Before the van was able to return to its proper lane, the bus driver in a last minute effort to avoid a head-on collision tried to swerve the bus to the left which explains why the bus' front left portion hit the front left of the van. Then, the bus (being the heavier of the two) pushed back the van to a perpendicular position towards the parked jeepney, which right portion of the van (side of the front passenger) collided with the front of the parked jeepney.

Apparently, the accident would not have happened had Baquilar stopped behind the stalled jeepney and allowed the bus to pass before he overtook the stalled jeepney.

More importantly, the eyewitness for the plaintiffs-appellees, Romeo Catiquista testified on cross-examination that the bus was already near the parked jeepney when Baquilar overtook the jeepney:[11]

Q: Is it not correct Mr. Witness that you were not able to observe the Long Star bus, you only knew that there was a bus because you heard that there was a bumped?

A: I knew it, I already saw because the van even made a signal for him to pass through.

Q: Now, how far away was the passenger bus Long Star bus when the van make its signal to pass from the van?

A: Not less than 15 but not more than 20.

Q: So, it is very near?

A: Yes, sir.

Q: And despite of the bus being near the van still overtook the jeepney?

A: Because the van has a place for him to overtake because the jeepney was parked on the shoulder of the road.

It is clear and uncontested that the van was behind the jeepney when it finally decided to overtake the parked vehicle.

It appears that when Baquilar abandoned his lane, he did not see to it first that the opposite lane was free of oncoming traffic and was available for a safe passage. It is a settled rule that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and he should not proceed if he cannot do so in safety.[12] Or if, after attempting to pass, the driver of the overtaking vehicle finds that he cannot make the passage in safety, the latter must slacken his speed so as to avoid the danger of a collision, even bringing his car to a stop if necessary.[13]

Clearly, the act of overtaking of Baquilar on the parked jeepney was in clear violation of Sec. 41, par. (a) of RA 4136 as amended, otherwise known as The Land Transportation and Traffic Code which provides:

Sec. 41. Restrictions on overtaking and passing. - (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

Moreover, Article 2185 states 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.” Unfortunately, plaintiffs-appellees failed to overcome such presumption.

Besides, the point of impact took place in the lane of the bus. Notably, the question on which lane the collision occurred is the most crucial at hand, as it determines which vehicle was on the wrong side of the road.[14]

We cannot give credence to the testimony of Catiquista that the collision took place at the lane going to Iloilo (van's lane). Catiquista admitted that he did not see the actual collision of the two vehicles. What he saw first were the tomatoes that fell from atop the bus and the next thing that he saw was the van and the bus were already attached to each other.[15]

On the other hand, SPO2 Eddie Unato testified that he was the one who conducted the investigation on the vehicular accident and prepared the sketch thereof. SPO2 Unato testified, thus:

Q: Are you the one who made this sketch?

A: Yes, sir.

xxx

Q: In your sketch, Mr. Witness, you placed here and you marked A as the van and B as the bus, C the jeepney that was parked and you placed as you marked as E, the possible point of impact, my question to you Mr. Witness, why was it that you placed as E the place of possible impact, what was your basis in saying that that was the possible point or impact?

A: Because I saw scattered windshield of the bus.

Q: So, it concluded that the point of impact was this point that you marked as E?

A: I am not sure, sir.

xxx

A perusal of the sketch of the scene of the accident shows that the point marked as “E” was in the lane going to Kalibo (lane of the bus) and not the lane going to Iloilo (lane of the jeepney and the van). Hence, it can be concluded that the van was still in the lane of the bus after it overtook the jeepney and was in the process of returning to its correct lane when the collision took place.

Also, the police investigation report reflected in the Police Blotter[16] prepared by SPO2 Unato also states:

xxx PNP investigation conducted that caused (sic) of accident due to sudden overtake of Toyota Van to the stopping passenger jeep and accidentally bumped each other to one approaching passenger Bus in opposite direction. Another cause is due to the slippery of the road wherein both drivers could no longer control the steering of their driving vehicle.

Notably, a police investigator, as with other officials, enjoys the presumption of regularity in the performance of official functions. Rule 131, Section 3 (m) of the Revised Rules of Evidence provides:

Sec. 3. Disputable presumptions.- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx

m. That official duty has been regularly performed; xxx

This presumption of regularity includes the public officer's official actuations in all the phases of his work.[17]

In sum, drivers of automobiles, when overtaking another vehicle, are charged with a high degree of care and diligence to avoid collision. The obligation rests upon him to see to it that vehicles coming from the opposite direction are not taken unaware by his presence on the side of the road upon which they have the right to pass.[18]

Considering that it was Baquilar's negligence as the immediate and proximate cause of the accident, this precludes any recovery from defendants-appellants for any damages suffered by plaintiffs-appellees from the accident as commanded by Articles 2179 of the Civil Code, viz:

Article 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Nor can We consider the negligence of Baquilar as merely contributory. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.”[19] On the other hand, no imputation of any lack of care on the part of Dela Cruz could also be concluded. He was merely driving the bus on the correct lane and was not overtaking anybody. There was also no allegation that Dela Cruz had the last clear chance to avoid the collision. It was Baquilar who maneuvered the van to overtake the stalled jeepney even after seeing the oncoming bus from the opposite direction. Clearly, no accident would have happened had Baquilar did not overtake the jeepney.

WHEREFORE, the Appeal is GRANTED. The Decision dated March 9, 2006 of Branch 15, Regional Trial Court, Roxas City is REVERSED and SET ASIDE. The Complaint is DISMISSED.

SO ORDERED.

Delos Santos, Chairperson, and Lagura-Yap, JJ., concur.

[1] Rollo, p. 49.

[2] Records, p. 180.

[3] Ibid., p.1.

- [4] Ibid., p. 38.
- [5] Ibid., p. 180.
- [6] Notice of Death, Rollo, p. 147.
- [7] Dy Teban Trading, Inc v. Ching, Inc, G.R. No. 161803, February 4, 2008, citing Corliss v. Manila Railroad Company, G.R. No. L-21291, March 28, 1969.
- [8] Dy Teban Trading, Inc v. Ching, Inc, *ibid*, citing Picart v. Smith, 37 Phil. 809, 813 (1918).
- [9] GSIS v. Pacific Airways Corporation, G.R. No. 170414, G.R. Nos. 170418, 170460, August 25, 2010, citing Ramos v. C.O.L. Realty Corporation, G.R. No. 184905, August 28, 2009.
- [10] Tan v. Jam Transit, Inc., G.R. No. 183198, November 25, 2009, citing Jose v. Court of Appeals, 379 Phil. 30 (2000); Aradillos v. Court of Appeals, G.R. No. 135619, January 15, 2004; People v. Bonifacio, 426 Phil. 511 (2002); People v. Marquina, 426 Phil. 46 (2002); Tangan v. Court of Appeals, 424 Phil. 139 (2002); People v. Whisenhunt, 420 Phil. 677 (2001); People v. Ubaldo, 419 Phil. 718 (2001); People v. Palijon, 397 Phil. 545 (2000); People v. Carillo, 388 Phil. 1010 (2000); People v. Roche, 386 Phil. 287 (2000); Vicente J. Francisco, *The Revised Rules of Court in the Philippines*, Vol. VII.
- [11] TSN dated November 28, 2002. pp.39-40.
- [12] Engada v. Court of Appeals, G.R. No. 140698, June 20, 2003 citing Mallari, Sr. v. Court of Appeals, G.R. No. 128607, January 31, 2000.
- [13] Engada v. Court of Appeals, *ibid.*, citing Batangas Laguna Tayabas Bus Co. v. IAC, G.R. Nos. L-74387-90, November 14, 1988.
- [14] Gabriel v. Court of Appeals, G.R. No. 128474, October 6, 2004.
- [15] TSN dated January 30, 2003, pp. 14-16.
- [16] Exhibit "9".
- [17] De Chavez v. Office of the Ombudsman, G.R. Nos. 168830-31, February 6, 2007, citing 31 Corpus Juris Secundum, Volume 31, pp. 802-803; American Jurisprudence 2d, Volume 29, p. 224; Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports, G.R. No. L-78385, August 31, 1987.
- [18] Dumayag v. People, G.R. No. 172778, November 26, 2012, citing United States v. Crame, Separate Opinion, 30 Phil. 2, 21-22 (1915).
- [19] Allied Banking Corp. v. Bank of the Philippine Islands, G.R. No. 188363, February 27, 2013, citing Philippine National Bank v. Cheah Chee Chong, G.R. Nos. 170865 & 170892, April 25, 2012.

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