

**BALTAZAR SALUDARES & CRESENCIA SALUDARES,
PLAINTIFFS-APPELLEES, VS. JOSE MARTINEZ AND GREGORIA P.
MARTINEZ, DEFENDANTS-APPELLANTS.**

G.R. No. L-27335. October 28, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal by defendant spouses, Jose Martinez and Gregoria Martinez, from a decision of the Court of First Instance of Davao, sentencing them to pay to plaintiff spouses, Baltazar Saldares and Cresencia Saldares, the sums of: (1) P6,000.00, for the death of Rolando Saldares; (2) P216.00, for transportation expenses incurred by the plaintiffs and their children from Manila to Davao, on account of the death of Rolando Saldares; (3) P1,622.50, for his hospitalization; (4) P2,530.45, for funeral expenses and services, as well as other expenses connected therewith; (5) P3,000.00, for moral damages; and (6) P2,000.00, as attorney's fees, apart from the costs.

While Angel Abanilla, a chief mechanic of J. Martinez Transportation, belonging to appellants herein, was driving its Bus No. 206, on November 29, 1961, at about 11:55 a.m., on his way to an auto supply store to buy spare parts for said enterprise, the bus hit or bumped Rolando Saldares, son of plaintiffs-appellees, a 14-year old, 4th year high school student, who was then riding a bicycle along Plaridel Street, Davao City. In consequence of the injuries sustained as he was thereby thrown to the ground, Rolando died on December 1, 1961. Accused of homicide through reckless negligence, Abanilla was, on July 30, 1962, convicted, by the Municipal Court of Davao City, of homicide through simple negligence and sentenced to the corresponding penalty, without, however, any pronouncement on damages, the right to file a separate civil action having been expressly reserved. On appeal, taken by Abanilla, the judgment of conviction against him was, on November 7, 1963, affirmed in its entirety by the Court of Appeals, the decision of which eventually became final and executory.

Meanwhile, or on February 19, 1962, Mr. and Mrs. Saldares had filed, with the Court of First Instance of Davao, the present action against appellants herein, Mr. and Mrs. Martinez, as owners and operators of J. Martinez Transportation and employer of said Angel Abanilla, to recover said damages. In due course, the court of first instance rendered, on March 22, 1966, its aforementioned decision in favor of the plaintiffs, from which the aforementioned defendants have appealed directly to this Court, alleging that the trial court had erred: (1) in holding them liable for damages, and (2) in fixing the amount thereof.

The first assignment of error is premised upon the theory that the accident did not take place while Abanilla was "in the service of the branch in which he was employed" or "on the occasion of his functions," it being urged that the occurrence took place at 11:55 a.m., whereas Abanilla's regular working hours in the morning were from 7:30 to 11:30 a.m.; that the vehicle involved in the accident was not on its regular trip; and that it was driven by Abanilla, a mere mechanic, not by a regular driver.

Testifying for appellants herein, Abanilla declared, however, that he left their shop at about 11:30 a.m. or even earlier, to buy spare parts needed by the company and that he used bus No. 206, instead of the service jeep,

because the latter was not available and his employer had previously authorized him, in such event, to use any other vehicle. Apart from the circumstance that these facts have been established by appellants' own evidence, they may not question the findings of fact in the appealed decision based thereon, in view of their direct appeal to this Court, which implied a waiver of their right to contest the decision of the lower court on questions of fact. Again, considering that Abanilla was appellants' mechanic and that their repair shop was then short of spare parts, it was Abanilla's duty to secure the same, for which he had the express permission of his employer, appellants herein, to use any vehicle of the company, whenever its service jeep was not available, in order to obtain the necessary spare parts. In fact,

Abanilla was retained in the employment of appellants herein even after the occurrence, which goes to show that, in acting as he did, the former had not violated any of the rules or instructions of the latter. It is thus clear that the accident took place while Abanilla was in the actual performance of his duties and on the occasion thereof.

Moreover, We have held in *La Mallorca v. Court of Appeals*[1] that "(t)he presentation of proof of the negligence of its employee gave rise to the presumption that the defendant employer did not exercise the diligence of a good father of the family in the selection and supervision of its employees." It was incumbent, therefore, upon appellants herein to overcome this presumption, but they failed to do so. On the contrary, the fact that, although Abanilla was a mechanic, not a regular driver, and had no more than a provisional driver's license, he was allowed to drive, not merely a service jeep, but a bulky passenger bus, without its regular driver, strongly indicates that appellants herein had not exercised due diligence in the discharge of their duty to supervise Abanilla in the performance of his functions.

Appellants say that Abanilla's license was not "provisional," but that of a "professional" driver. However, the decision of the Court of Appeals in the criminal case against Abanilla - which has long become final and executory - explicitly states that said license was merely a "provisional" one. Besides, appellants' attempt to disclaim responsibility for Abanilla's act, upon the ground that, being a mechanic only, he should not have driven the passenger bus, indicates their belief that he was not qualified or competent to drive the same. In fact, its driver's seat - according to said decision of the Court of Appeals - was so located that the driver could not see distinctly where the bicycle of Rolando Saldares was, when the bus overtook and sideswiped it. Hence, Abanilla did not know that the bicycle had been knocked off, until he heard the people shout, to indicate that something untoward had happened.

Appellants' second assignment of error raises questions purely of fact which, as above pointed out, are deemed waived in this direct appeal to the Supreme Court, and, hence, cannot be entertained therein. At any rate, We are fully satisfied that the trial court did not err in decreeing the payment of the amounts set forth in the decision appealed from. Thus, for instance, the sums of P6,000.00, P3,000.00 and P2,000.00 awarded, respectively, for the death of Rolando Saldares, moral damages and attorney's fees, aggregate less than the sum of P12,000.00. We have consistently held, since late in 1968,[2] to be the reasonable amount of damages collectible for the death of a person in consequence of a tortious act, even without any proof of the damages thereby sustained. The sums of P1,622.50 and P2,530.45 awarded, respectively, for disbursements made during the confinement of appellees' son, Rolando, in the Davao General Hospital and funeral expenses, are borne out by bills of said Hospital, the testimony of appellee Cresencia Saldares, and other records of said expenses. The lower court found such proof worthy of credence, and its finding thereon is not subject to our review, in this direct appeal, aside from being substantially supported by the evidence. Lastly, it has been duly established that, being in Manila, at the time of the accident, appellees and two (2) of their children had to fly to Davao City, thereby spending the aggregate sum of P216.00.

In short, defendants' appeal is manifestly devoid of merit, in view of which, the decision appealed from should be,

as it is hereby affirmed, with costs against the defendants-appellants.

IT IS SO ORDERED.

Reyes, J.B.L, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee and Barredo, JJ., concur.

[1] L-20761, July 27, 1966, italics supplied.

[2] People v. Pantoja, L-18793, October 11, 1968.

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