

**ROSARIO SANTOS VDA. DE BONIFACIO, VIRGNIA BONIFACIO,
ROSALINDA BONIFACIO, ROMEO BONIFACIO, ZENAIDA BONIFACIO,
GENEROSO BONIFACIO, ANDRES BONIFACIO, JOSE BONI-FACIO,
JOVITO BONIF...**

G.R. No. L-26810. August 31, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal to the Supreme Court (lodged prior to the enactment of republic Act No. 5440) from the judgment of the Court of First Instance of Rizal (Pasig), in its Civil Case No. 8275, sentencing the defendants-appellants, B. L. T. Bus Co., Inc., and its driver Sergio de Luna, to pay jointly and severally to the plaintiffs-appellees, as damages arising from a vehicular accident, the total amount of P240,905.72, with interest from the filing of the complaint.

Said Civil Case 8275 was filed pursuant to a reservation made by the plaintiffs to file a civil action separately from the criminal case instituted against the L. T. B. bus driver Sergio de Luna in the Court of First Instance of Laguna, for homicide and multiple physical injuries and damage to property through reckless imprudence, in connection with the same vehicular accident. The Laguna court had convicted de Luna of the criminal charge, but the judgment was appealed and is pending in the Court of Appeals.

Of the detailed findings of fact of the trial court, we affirm the following as either non-controverted or preponderantly established by the evidence:

"Before February 27, 1964, Jovito Bonifacio, Sr., together with his wife (plaintiff Rosario Santos Vda. de Bonifacio) and neighbor Agustin Angeles, used to bathe in the Pansol hot springs at Los Baños, Laguna, twice a week. They made such trips in his 1962 Mercedes Benz car with plaintiff Alberto Concepcion as his driver, a duly licensed driver since 1946.

"About 4:00 o'clock in the morning of February 27, 1964, the four of them left Barrio Sumilang, Pasig, bound for the Pansol hot springs in Los Baños, Laguna. Jovito, Sr. was seated beside his driver Alberto Concepcion; while Agustin Angeles was seated on the left side of the rear seat with plaintiff Rosario Santos Vda. de Bonifacio to his right. Alberto Concepcion was driving the car on the right lane facing Los Baños at the rate of 30 miles per hour because the concrete road was slippery as it was then drizzling. After going down the overpass or bridge and negotiating the curve after the said bridge at Barrio Landayan, San Pedro Tunasan, Laguna, Alberto Concepcion saw a cargo truck parked on the left portion of the concrete highway without any parking lights. It was about 5:20 a.m., still dark and raining. While he was about 15 meters from the said parked cargo truck, he saw for the first time the oncoming LTB passenger bus No. 136 bearing 1964 plate No. PUB-1276, about 200 meters away from him and about 185 meters behind the parked cargo truck. Said bus was then driven at a very fast clip by the defendant Sergio de Luna. Because he was on his right lane, Alberto Concepcion continued on his way at the rate of 30 miles per hour. The parked truck was entirely on the left lane and about one (1) meter from the center, of the concrete highway. His Mercedes Benz was passing

alongside the parked truck and about 70 cm. from the center of the road. Just as he was about to pass beyond the parked truck, the oncoming LTB bus suddenly swerved to its left towards the right lane of the Mercedes Benz and collided with the Mercedes Benz. The place of collision was about 10 meters from the parked truck. The impact caused the Mercedes car to swerve to the right shoulder of the road facing Los Baños as Alberto slammed his brakes, and the Mercedes car stopped on the right shoulder, which is about two meters wide; while the LTB bus made a complete U-turn and finally stopped on the left lane of the concrete highway facing Los Baños or the direction where it came from. It was filled with about 40 passengers then (see pictures Exhs. H, I, J, K, L, M, and SS or 13 and 26, pp. 92-94, 391, 576, rec.). The left front part of the Mercedes Benz was smashed (see pictures Exhs. H and I, p. 92, rec.). The violent impact threw Jovito Bonifacio, Sr. out of the car onto the right shoulder of the road facing Los Baños, causing his instantaneous death (Exhs. J, K, L and M, pp. 93-94, rec.) while the other passengers, the driving [sic] Alberto Concepcion, Mrs. Rosario Santos Vda. de Bonifacio, and Agustin Angeles, lost consciousness and were seriously injured. They recovered consciousness in the Manila Sanitarium and Hospital in Pasay City to where they were brought that same morning of the incident." (Decision, Rec. on App., pp. 116-119)

As is usual in cases of this kind, three main issues arise:

- (1) Who of the drivers of the colliding vehicles was at fault?
- (2) Is the employer of the guilty driver responsible for the fault of the latter?
- (3) Are the damages awarded reasonable?

Taking up the questions seriatim, we find that the court below correctly held that the proximate cause of the accident was the negligence of the L. T. B. bus driver, de Luna, who failed to take the necessary precautions demanded by the circumstances. He admitted that when the mishap occurred, it was still dark; and as it was raining, requisite prudence required that de Luna should be more careful than usual, and slacken his pace, for the wet highway could be expected to be slippery. Even assuming that the presence of the parked cargo truck did constitute an emergency, although it was in plain view, still, if de Luna had not been driving unreasonably fast, his bus would not have skidded to the left and invaded the lane of the oncoming car when he applied his brakes. His having failed to see the parked cargo truck until he was only 50 meters from it also justifies the inference that he was inattentive to his responsibility as a driver. That he did not know that anyone else was using the road is no defense to his negligent operation of his vehicle, since he should be especially watchful in anticipation of others who may be using the highway; and his failure to keep a proper lookout for persons and objects in the line to be traversed constitutes negligence (7 Am. Jur. 2d 901). Furthermore, in intruding into the lane reserved for vehicles coming from the opposite direction, it was incumbent upon the bus driver to make sure that he could do so without danger.

Confirmatory of the foregoing considerations is the fact that de Luna himself admitted, in the statement, Exhibit "A", taken by the chief of police, and subscribed and sworn to before the mayor of San Pedro, Laguna, at 8:00 o'clock in the same morning of the accident, and while the facts were fresh in his mind, that when he (de Luna) noticed the parked cargo truck he slammed on his brakes and because of this, the bus skidded to the left and hit the Mercedes Benz car ("x x x x ang ginawa ko po ay nagpreno ako ng aking sasakyang minamaneho at dahil po dito ay umislayd ang aking trak na papuntang kaliwa, subalit siya po namang pagdaan ng isang awtong Mercedes Benz na aking nabunggo x x x x.")

The version at the trial of defendant-appellant Sergio de Luna, and his witnesses, is that when the former saw the parked cargo truck he slowed down, swerved a little to the left, then completely stopped his vehicle; that right then, the Mercedes Benz car hit his bus, with such force that the bus turned to the direction where it came from. Not only is this version belied by de Luna's original and spontaneous statement to the San Pedro Police, but it was

infirm by physical facts.

It is incredible, and contrary to common experience and observation, that the bus, admittedly three (3) times bigger than the car, and loaded with about forty (40) passengers, could be turned around while standing still by the impact of the much smaller car. Nor was his swerving to the left justifiable if he were in control of his vehicle, since he had a clear view of the left lane and the oncoming Mercedes Benz from the driver's seat of the bus. Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself (*People v. Baquiran*, L-20153, 29 June 1967, 20 SCRA 451).

There was no negligence on the part of the driver of the Mercedes car, Alberto Concepcion.

"A motorist who is properly proceeding on his own side of the highway, even after he sees an approaching motorist coming toward him on the wrong side, is generally entitled to assume that the other motorist will return to his proper lane of traffic, x x x x ." (8 Am. Jur. 2d 319)

That the L.T.B. bus was damaged near the front right wheel and fender proves that the Mercedes was already very close to the place of collision when it occurred, so that the car driver had no chance to evade it. Nor did said driver, Concepcion, possess any means of knowing that the bus intruding into his line of travel was skidding out of control, and could not draw back to its proper lane.

Appellants pretend that the Mercedes car was proceeding at reckless speed, but this charge rests on nothing more substantial than an alleged statement by Mrs. Bonifacio at the hospital that her driver was driving fast. The court below, in our opinion, correctly discredited this evidence, for at the time it was supposedly made, Mrs. Bonifacio was still in a state of shock, with visitors barred by doctor's orders; and, moreover, defense witness, ex-Cpl. Casantusan, did not even take down or report the pretended statement, notwithstanding its patent importance; there was no corroboration thereof, and it was contradicted by the car driver and by Mrs. Bonifacio herself. The rule, too well-known to require citation of authorities, is that in the absence of clear error (and none is shown in the present instance) a trial court's estimate on the credibility of witnesses, whose demeanor it had unparalleled opportunity to observe, will not be disturbed on appeal.

At any rate, so long as the Mercedes car remained in its proper lane, its speed could not have been the proximate cause of the mishap.

On the second issue posed, the rule under Article 2180 of the Civil Code of the Philippines makes an employer liable for damages caused by his employee in the discharge of his duties, unless the former adequately proves having exercised due care in the selection and supervision of the employee.

Appellant company defends that it had observed all the diligence of a good father of a family to prevent damage, conformably to the last paragraph of said Article 2180. It adduced evidence to show that in hiring driver de Luna, the latter was tested on his proficiency as a driver that he passed the test given by the company's board of examiners, composed of the office manager, the medical director, the chief of the legal department and the job superintendent, aside from the orientation test given by experienced drivers along the different lines of the company; that the company issued service manuals to its employees, aside from memorandum circulars and duty orders to govern the conduct of its drivers; that it assigns inspectors interlinked with one another along the different lines of the company to see to it that the rules and regulations are complied with by all the drivers; that it metes out penalties, such as fines, to erring drivers; that it maintains shops at different stations, where several mechanics are assigned to see to it that no truck leaves on the line without being thoroughly checked; that it keeps a summary of service records of its drivers to help in determining their efficiency and fitness; that it conducts seminars on safe-driving and prevention of accidents; that it had received an award of appreciation in 1963 by the National Traffic Safety Committee; that it used the best available brake lining on Bus No. 136 and that said bus

was completely checked for roadworthiness the day before the accident.

Yet the evidence of appellant company also established facts that demolished its very defense of "diligence of a good father of a family", for it plainly shows inexcusable laxity in the super-vision of its driver and in the maintenance of its vehicles. Salient among these facts are the following:

(a) Defense witness Cuevas asserted that the brake lining of the bus was changed on 10 January 1964, over a month prior to the accident, although brake linings last about 30 days only. The change in lining was overdue but the appellant bus company tried to hide this fact. Said the trial court:

"xxxx. The job sheet for the change of brake lining appears dated Jan. 10, 1964, in ink. There was an attempt to change it by crossing out "Jan." and super-imposing the word "Feb." in pencil (see page 598, rec.). There was an attempt to make "Feb. 10, 1964" as altered appear as the correct date - - instead of Jan-uary 10, 1964 - - by not arranging chronologi-cally the various orders and/or job sheets for said bus No. 136 in said folder, Exh. 27, and by placing the said small job sheet as page 11 of the said folder, Exhibit 27, which has for its first page an order for bus No. 136 dated February 18, 1964 (p. 1 of Exhi-bit 27 or Exh. 25-B, p. 290, rec.)." (Rec. on Appeal, p. 132)

By resorting to these documentary alterations, the company in-dicated its awareness that its case is weak or unfounded and from that may be inferred that its case of appellant lacks truth and merit,[1] The claim on appeal that the alteration in the writing was innocent, or that the company should have been given an opportunity to explain because it was caught unaware that the court below would take the incident against them as it did, is untenable. The rule requires that a party, producing a writing as genuine but which is found altered after its execution, in a part material to the question in dispute, should account for the alteration, and, if "he do that, he may give the writing in evidence, but not otherwise." (Section 32, Rule 132, Revised Rules of Court) In other words, the company should have ac-counted for the alteration when it introduced the job sheet in evidence, and not endeavour to explain the alteration afterwards.

(b) The record of driver de Luna shows that, on the average, he was at the wheel and on the road for eleven (11) hours and thirty-five (35) minutes per day, from Paete to Manila and back, and Paete to San Antonio and back, starting before dawn until the evening. He has been in the Paete -Manila route for four (4) years (T. s. n., 22 November 1965, pages 38-39). He was paid by the hour, so that the more time he drove, the greater compensation he received. The employer company thus abetted, obviously for the sake of greater profit, the gruelling schedule, unmindful of the harmful consequence that excessive working time would register upon the driver's health, and, particularly, on his reflexes. The pay-off came when driver de Luna, because of his accumulated fatigue and inatten-tiveness, failed to notice seasonably the presence of the parked cargo truck upon his lane of traffic, impelling him to brake suddenly in an effort to avoid hitting it. The braking made the bus slide and encroach upon the other lane, resulting in its collision with the oncoming auto-mobile.

(c) Sergio de Luna had repeatedly violated company rules. Despite his numerous infractions, 31 in all since 1951, and including a collision with a carretela, the company took no more drastic action against him other than repeated warnings and imposing token fines, which on the whole amounts to tolerance of the violations or laxity or negligence in the enforcement of the company rules.

(d) On its bus involved in the accident (No. 136), the appellant company was also negligent. The bus was last overhauled on 26 Jan-uary 1963 but was usually overhauled every six months; its overhauling, therefore, was overdue by six months. In addition, as heretofore observed, its brake linings were last changed on 10 January 1964, but were usually changed every 30 days; the changing was, therefore, overdue by one (1) month and seventeen (17) days at the time of the mishap, and must have contributed to the driver's inability to control the

skidding that led to the collision.

In the face of these plain instances of lax supervision, the trial court has aptly remarked:

"The mere issuance of numerous rules and regulations, without the corresponding periodic checks as to whether such rules and regulations are being complied with, is not sufficient to exempt the defendant bus firm from liability arising from the negligence of its employees. Neither the establishment of maintenance and repair shops, which do not regularly service its buses, would suffice to demonstrate the diligence of the employer in the selection and supervision of its employees and in servicing and maintaining the buses in good running condition."

The minor errors charged against the appealed decision do not suffice to overrule the findings of negligence of both the driver and the company, measured by the requirements of ordinary diligence. Appellants' complaint in their brief, that the lower court applied the law requiring carriers to observe extraordinary diligence with respect to passengers, and not ordinary diligence with respect to third parties as in the present case, is without basis.

On the question of damages, the trial court properly took into account that the late Jovito Bonifacio, Sr., was already a successful businessman when his life was cut short, at the age of 49, by the highway accident. He was treasurer of Bonifacio Bros., Inc., a firm owned by himself and his brother, and which is engaged in the business of repairing motor vehicles. The assets of said firm in 1962 were worth P1,059,754.53; it had 102 employees receiving a salary of P1,800.00 or more, per annum; in 1963, its assets were worth P995,885.78 (Exhibits "KK-2" & "KK-3"). In April, 1963, the deceased founded J. Bonifacio Bros., Inc., which also engaged in the same line of business, with principal office at 267 P. Casal, Manila, and of which he was president at the time of his demise. The deceased had a net income of P33,738.62 and P24,000.00 in 1962 and 1963, respectively.[2] The lower court, therefore, fairly assessed that, had he lived to the age of 55, he would have earned a total net income of P144,000.00. The six-year life expectancy allowed by the trial court is shorter than that shown by insurance mortality tables, but the award was not appealed.

Bonifacio's family incurred expenses of P13,764.05, as follows: coffin - P600.00; burial lot - P90.00; cost of publication of death notices - P720.00; tomb - P4,850.00; food and gasoline during vigil - P1,782.00; other expenses - 500.00; compensation to a private investigator to look into the records of defendant driver Sergio de Luna - P222.05; and damage to Mercedes Benz car, not covered by insurance - P5,000.00.

Defendants-appellants question the actual and litigation expenses because they were paid by the firm J. Bonifacio Bros., Inc., arguing that said firm, not the plaintiffs, has the right to claim the damages by virtue of subrogation, per Articles 1302 and 1303 of the Civil Code. This is a defense that, even if true (which we need not rule upon), should have been invoked in the court below, and its interposition comes too late on appeal. Moreover, such a technical defense deserves scant consideration, because the firm is a family corporation and a subrogation of parties will neither diminish the expenses nor exculpate defendants-appellants from liability therefor.

Plaintiff-appellee Rosario Santos Vda. de Bonifacio regained consciousness at the Manila Sanitarium and Hospital. She suffered a lacerated wound in the frontal region of her head, contusion on the left side of her face, fracture of the distal portion of her left ulna and dislocation of the left femur. She was confined in the hospital from 27 February 1964 to 15 March 1964. Her hospital bills and compensation for special nurses amounted to P1,658.48. During her confinement, she failed to receive her salary, amounting to P608.00.

Driver Alberto Concepcion of the Mercedes Benz car, sustained compound fractures; his right foot was in a plaster cast for six (6) months and one (1) week; his left leg was under traction and hanging for two (2) weeks, his left hip-bone dislocated. He was confined in the hospital for one (1) month and four (4) days. Up to the time the lower court rendered its decision on 30 July 1966, Concepcion had to go in crutches to the hospital, for treatment.

His medical expenses amounted to P1,777.21. As a driver of the deceased Jovito Bonifacio, Sr., he was paid a weekly salary of P50.00, with free meals, which remuneration may be estimated to be P4,000.00 yearly (T. s. n., 22 October 1964, page 10). He was 40 years old at the time of the accident and there is no indication as to when he would be able to drive again. If he would be permanently incapacitated from driving again, he may, in the future, be able to find a different calling or gainful occupation. The award of P15,000. 00, a s compensatory damages, is fair and reasonable.

Agustin Angeles suffered a broken right wrist, a crack in the top left part of his head, sunken left eye, and a wound in the left cheek. He regained consciousness at the hospital only after 11 days from the time of the accident. He was confined for 18 days, and billed for P1,097.98. Due to the accident, his memory and vision were impaired; he now walks with a cane; his bowel movement and urination are now abnormal and irregular; he cannot freely move his right arm. He was 76 years old at the time of the accident, but despite his age, he used to repair watches, with an average monthly income of P250.00. He cannot repair watches anymore. The lower court granted him compen-satory damages for P3,000.00.

For their shock, worry and anguish, the court below awarded moral damages to the plaintiffs-members of the family of the deceased Jovito Bonifacio, Sr. in the sum of P20,000.00; to Rosario Santos Vda. de Bonifacio, the sum of P10,000.00; to Alberto Concepcion and Agustin Angeles, the sum of 5,000.00 each. It also granted the family group and each of the aforementioned plaintiffs P5,000.00, as exemplary damages. The quantum of moral and exemplary damages thus awarded is not unconscionable, as appellants aver, but are justified, considering all the circumstances of the case.

Interest on the various damages at 6% per annum since the filing of the suit was also awarded, despite the lack of prayer for interest in the plaintiffs' complaint. The grant of interest is not necessarily error, for under the Civil Code -

"ART. 2211. In crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court."

The findings and conclusions of negligence on the part of the de-fendants-appellants, and not on the part of the plaintiffs-appellees, show the lack of merit of the last assignment of error about the denial of appellants' counterclaim for the fees of their own counsel.

Appellants stress that the trial court should be held disqualified because the counsel for plaintiffs-appellees had been a classmate of the trial judge. Admittedly, this is not a legal ground for disqualifica-tion. To allow it would unnecessarily burden other trial judges to whom the case would be transferred. Ultimately, confusion would result, for under the rule advocated, a judge would be barred from sitting in a case whenever one of his former classmates (and he could have many) appeared. Nor have the appellants successfully shown here that bias distorted the judgment or conduct of the challenged trier of the case. That he should question defense witnesses more closely than those of the plaintiffs is but natural, since defendants' evidence varies from proof already on record. A desire to get at the truth is no proof of bias or prejudice.

FINDING NO REVERSIBLE ERROR, the decision appealed from is hereby affirmed. Costs against the appellants.

Concepcion, C.J., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur. Makalintal and Makasiar, JJ., took no part.

[1] De Leon vs. Juyco, 73 Phil. 588, citing 1 Wigmore on Evidence, section 277, pages 566-568).

[2] Exhibits "LL" & "MM".

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