

**LBC AIR CARGO, INC. FERNANDO M. YU AND JAIME TANO,
PETITIONERS, VS. HON. COURT OF APPEALS, FOURTH DIVISION,
SHERWIN MONTEROLA Y OYON-OYON, REPRESENTED BY
PATROCENIA GRONDIANO Y ...**

G.R. No. 101683. February 23, 1995

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-101683/>

VITUG, J.:

In this petition for review, the application of the doctrines of "proximate cause" and "last clear chance" is, once again, being put to test. The petition questions the decision of the Court of Appeals, dated 18 July 1991, which has reversed that of the trial court.

The case arose from a vehicular collision which occurred at about 11:30 in the morning of 15 November 1987. Rogelio Monterola, a licensed driver, was traveling on board his Suzuki motorcycle towards Mangagoy on the right lane along a dusty national road in Bislig, Surigao del Sur. At about the same time, a cargo van of the LBC Air Cargo Incorporated, driven by defendant Jaime Tano, Jr., was coming from the opposite direction on its way to the Bislig Airport. On board were passengers Fernando Yu, Manager of LBC Air Cargo, and his son who was seated beside Tano. When Tano was approaching the vicinity of the airport road entrance on his left, he saw two vehicles racing against each other from the opposite direction. Tano stopped his vehicle and waited for the two racing vehicles to pass by. The stirred cloud of dust made visibility extremely bad. Instead of waiting for the dust to settle, Tano started to make a sharp left turn towards the airport road. When he was about to reach the center of the right lane, the motorcycle driven by Monterola suddenly emerged from the dust and smashed head-on against the right side of the LBC van. Monterola died from the severe injuries he sustained.

A criminal case for "homicide thru reckless imprudence" was filed against Tano. A civil suit was likewise instituted by the heirs of deceased Monterola against Tano, along with Fernando Yu and LBC Air Cargo Incorporated, for the recovery of damages. The two cases were tried jointly by the Regional Trial Court, Branch 29, of Surigao del Sur.

On 29 July 1990, the trial court dismissed both cases on the ground that the proximate cause of the "accident" was the negligence of deceased Rogelio Monterola.

Private respondent appealed the dismissal of the civil case to the Court of Appeals. On 18 July 1991, the appellate court reversed the court a quo. It held:

"WHEREFORE, the judgment appealed from is REVERSED, and another one is hereby rendered ordering the defendants Jaime Tano and LBC Air Cargo, Inc. to jointly and severally pay the plaintiff Patrocenia Monterola the following amounts:

"To SHERWIN MONTEROLA:

"1. Indemnity for the death of Rogelio Monterola ----- P50,000.00

"2. For Moral damages ----- 20,000.00

"TO PATROCINIA GRONDIANO Y MONTEROLA:

"3. Actual damages ----- P 7,361.00

"4. Hospitals & Burial Expenses ----- 15,000.00

"5. Attorneys Fees and expenses of Litigation ----- 10,000.00

"Plus the costs.

"Actual payment of the aforementioned amounts should, however, be reduced by twenty (20%) per cent." [1]

In the instant petition for review, petitioners contend that -

"1.

The Court of Appeals erred in finding that Jaime Tano Jr. was negligent in the driving of his vehicle and in failing to give a signal to approaching vehicles of his intention to make a left turn.

"2.

The Court of Appeals erred in not finding that the proximate cause of the accident was the victim's negligence in the driving of his motorcycle in a very fast speed and thus hitting the petitioner's cargo van." [2]

The issues raised are thus essentially factual. The intrinsic merit of, as well as cogency in, the detailed analyses made by the Court of Appeals in arriving at its findings is at once apparent. Said the appellate court:

"That visibility was poor when Jaime Tano made a left turn was admitted by the latter.

"Q

When these two vehicles passed by your parked vehicle, as you said, there were clouds of dust, did I get you right?

"A

Yes sir, the road was dusty.

"Q

So much so that you could no longer see the vehicles from the opposite direction following these vehicles?

"A

It is not clear, sir, so I even turned on my left signal and the headlight.

"Q

What do you mean by it was not clear, you could not see the incoming vehicles?

"A

I could not see because of the cloud of dust.

"Q

And it was at this juncture, when you were to follow your theory, when you started your LBC van again and swerved to the left leading to the Bislig airport?

"A

I did not enter immediately the airport, I waited the dust to clear a little before I drove.

"x x x x x x x x

"Q

In other words when you said that it was slightly clear, you would like to tell the Honorable Court that you could only clearly see big vehicles x x x but not small vehicles like a motorcycle?

"A

I could see clearly big vehicles but not small vehicles like a motorcycle.

"Q

Like the motorcycle of Rogelio Monterola?

"A

Yes, sir. I could not see clearly. (Tano, tsn, April 18, 1989, pp. 26--30) (p. 15, Appellant's brief).

"Tano should not have made a left turn under the conditions admitted by him. Under the Land Transportation and Traffic Code, the driver of any vehicle upon a highway, before starting, stopping or turning from a direct line, is called upon to first see that such movement can be made in safety, and whenever the operation of any other vehicle approaching may be affected by such movement, shall give a signal plainly visible to the driver of such other vehicles of the intention to make such movement (Sec. 44, R.A. 4136, as amended). This means that before a driver turns from a direct line, in this case to the left, the driver must first see to it that there are no approaching vehicles and, if there are, to make the turn only if it can be made in safety, or at the very least give a signal that is plainly visible to the driver of such other vehicle. Tano did neither in this case, for he recklessly made a left turn even as visibility was still 'very poor, and thus failed to see the approaching motorcycle and warn the latter of his intention to make a left turn. This is plain and simple negligence.

"In thus making the left turn, he placed his vehicle directly at the path of the motorcycle which, unaware of Tano's intention to make a left turn, smashed at Tano's vehicle. It was Tano's negligence that created the risk or the condition of danger that set into operation the event that led to the smashedup and untimely death of Rogelio Monterola.

"Rogelio Monterola's motorcycle would not have hit the cargo van had Tano, in operating it, not recklessly turned left when visibility was still poor, and instead observed the directive of the Land Transportation Code that before doing so, he should first see to it that such movement can be made in safety, and that whenever any other vehicle approaching may be affected by such movement, should give a signal plainly visible to the driver of such other vehicle of the intention to make such movement.

"That Rogelio Monterola was running fast despite poor visibility as evidenced by the magnitude of the damage to the vehicles is no defense. His negligence would at most be contributory (Article 2179, N.C.C.). Having negligently created the condition of danger, defendants may not avoid liability by pointing to the negligence of the former.

"x x x x x x x x .

"Tano's proven negligence created a presumption of negligence on the part of his employer, the LBC Air Cargo Corporation, in supervising its employees properly and adequately (Phoenix Construction, Inc. vs. Intermediate Appellate Court, supra), which may only be destroyed by proof of due diligence in the selection and supervision of his employees to prevent the damage (Article 2180, N.C.C.). No such defense was

interposed by defendants in their answer.

"We, however, fail to see Fernando Yu's liability as Manager of LBC-Mangagoy Branch Office, there being no employer-employee relationship between him and Jaime Tano who is a driver of the LBC Air Cargo Inc. It was held in *Philippine Rabbit Bus Lines Inc., et al. vs. Phil. American Forwarders, Inc.*, 63 SCRA 231, that the term 'Manager' in Article 2180 is used in the sense of 'employer.' Hence, no tortious or quasi-delictual liability can be fastened on Fernando Yu as branch manager of LBC Air Cargo Inc.

"Now for the amount of damages. Aside from the indemnity for death which has been pegged at P50,000.00 (Resolution En Banc, August 30, 1990, cited in *People vs. Sazon*, 189 SCRA 700), the evidence disclose that as a result of the accident, Rogelio Monterola's motorcycle was damaged, the repair cost of which amounted to P7,361.00 (Exh. E-1), for the hospitalization, wake and burial expenses, plaintiff spent P15,000.00. There is likewise no question that by reason of Rogelio Monterola's untimely death, his only child 14 years old Sherwin Monterola, suffered mental anguish, fright, serious anxiety, wounded feelings and moral shock that entitles him to moral damages which we hereby fix at P20,000.00. Because of defendants' refusal to indemnify the plaintiff for his father's death, the latter was compelled to litigate and engage the services of counsel. He is therefore entitled to an additional amount of P10,000.00 for attorney's fees and expenses of litigation.

"Considering, however, the contributory negligence of Rogelio Monterola in driving at a fast clip despite the fact that the road was dusty, we reduce the aggregate amount of damages to which the plaintiff is entitled by twenty per cent (*Phoenix Construction Inc. vs. Intermediate Appellate Court*, *Supra*)." [3]

From every indication, the proximate cause of the accident was the negligence of Tano who, despite extremely poor visibility, hastily executed a left turn (towards the Bislig airport road entrance) without first waiting for the dust to settle. It was this negligent act of Tano, which had placed his vehicle (LBC van) directly on the path of the motorcycle coming from the opposite direction, that almost instantaneously caused the collision to occur. Simple prudence required him not to attempt to cross the other lane until after it would have been safe from and clear of any oncoming vehicle.

Petitioners poorly invoke the doctrine of "last clear chance" (also referred to, at times, as "supervening negligence" or as "discovered peril"). The doctrine, in essence, is to the effect that where both parties are negligent, but the negligent act of one is appreciably later in time than that of the other, or when it is impossible to determine whose fault or negligence should be attributed to the incident, the one who had the last clear opportunity to avoid the impending harm and failed to do so is chargeable with the consequences thereof (see *Picart vs. Smith*, 37 Phil. 809). Stated differently, the rule would also mean that an antecedent negligence of a person does not preclude the recovery of damages for the supervening negligence of, or bar a defense against liability sought by, another if the latter, who had the last fair chance, could have avoided the impending harm by the exercise of due diligence (*Pantranco North Express, Inc. vs. Baesa*, 179 SCRA 384; *Glan People's Lumber and Hardware vs. Intermediate Appellate Court*, 173 SCRA 464).

In the case at bench, the victim was traveling along the lane where he was rightly supposed to be. The incident occurred in an instant. No appreciable time had elapsed, from the moment Tano swerved to his left to the actual impact, that could have afforded the victim a last clear opportunity to avoid the collision.

It is true however, that the deceased was not all that free from negligence in evidently speeding too closely behind the vehicle he was following. We, therefore, agree with the appellate court that there indeed was contributory negligence on the victim's part that could warrant a mitigation of petitioners' liability for damages.

WHEREFORE, the appealed decision is **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, p. 17.

[2] Rollo, pp. 30-31.

[3] Rollo, pp. 51-55.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.