

METRO MANILA TRANSIT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS AND NENITA CUSTODIO, RESPONDENTS.*G.R. No. 104408. June 21, 1993*

Ponente: REGALADO, J.

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This appeal calls for a review of the legal validity and sufficiency of petitioner's invocation of due diligence in the selection and supervision of employees as its defense against liability resulting from a vehicular collision. With the facility by which such a defense can be contrived and our country having reputedly the highest traffic accident rate in its geographical region, it is indeed high time for us to once again address this matter which poses not only a litigation issue for the courts but affects the very safety of our streets.

The facts of the case at bar are recounted for us by respondent court, thus --

"At about six o'clock in the morning of August 28, 1979, plaintiff-appellant Nenita Custodio boarded as a paying passenger a public utility jeepney with plate No. D7 305 PUJ Pilipinas 1979, then driven by defendant Agudo Calebag and owned by his co-defendant Victorino Lamayo, bound for her work at Dynetics Incorporated located in Bicutan, Taguig, Metro Manila, where she then worked as a machine operator earning P16.25 a day. While the passenger jeepney was travelling at (a) fast clip along DBP Avenue, Bicutan, Taguig, Metro Manila another fast moving vehicle, a Metro Manila Transit Corp. (MMTC, for short) bus bearing plate no. 3Z 307 PUB (Philippines) '79 driven by defendant Godofredo C. Leonardo was negotiating Honeydew Road, Bicutan, Taguig, Metro Manila bound for its terminal at Bicutan. As both vehicles approached the intersection of DBP Avenue and Honeydew Road they failed to slow down and slacken their speed; neither did they blow their horns to warn approaching vehicles. As a consequence, a collision between them occurred, the passenger jeepney ramming the left side portion of the MMTC bus. The collision impact caused plaintiff-appellant Nenita Custodio to hit the front windshield of the passenger jeepney and (she) was thrown out therefrom, falling onto the pavement unconscious with serious physical injuries. She was brought to the Medical City Hospital where she regained consciousness only after one (1) week. Thereat, she was confined for twenty-four (24) days, and as a consequence, she was unable to work for three and one half months (3 1/2)."[1]

A complaint for damages[2] was filed by herein private respondent, who being then a minor was assisted by her parents, against all of therein named defendants following their refusal to pay the expenses incurred by the former as a result of the collision.

Said defendants denied all the material allegations in the complaint and pointed an accusing finger at each other as being the party at fault. Further, herein petitioner Metro Manila Transit Corporation (MMTC), a government-owned corporation and one of the defendants in the court a quo, along with its driver, Godofredo Leonardo, contrarily averred in its answer with cross-claim and counterclaim[3] that the MMTC bus was driven in a prudent and careful manner by driver Leonardo and that it was the passenger jeepney which was driven recklessly considering that it hit the left middle portion of the MMTC bus, and that it was defendant Lamayo, the owner of the jeepney and employer of driver Calebag, who failed to exercise due diligence in the selection and

supervision of employees and should thus be held solidarily liable for damages caused to the MMTC bus through the fault and negligence of its employees.

Defendant Victorino Lamayo, for his part, alleged in his answer with cross-claim and counterclaim[4] that the damages suffered by therein plaintiff should be borne by defendants MMTC and its driver, Godofredo Leonardo, because the latter's negligence was the sole and proximate cause of the accident and that MMTC failed to exercise due diligence in the selection and supervision of its employees.

By order of the trial court, defendant Calebag was declared in default for failure to file an answer.[5] Thereafter, as no amicable settlement was reached during the pre-trial conference,[6] trial on the merits ensued with the opposing parties presenting their respective witnesses and documentary evidence.

Herein private respondent Nenita Custodio, along with her parents, were presented as witnesses for the prosecution. In addition, Dr. Edgardo del Mundo, the attending physician, testified on the cause, nature and extent of the injuries she sustained as a result of the vehicular mishap.[7] On the other hand, defendant MMTC presented as witnesses Godofredo Leonardo, Christian Bautista and Milagros Garbo. Defendant Lamayo, however, failed to present any witness.

Milagros Garbo testified that, as a training officer of MMTC, she was in charge of the selection of the company's bus drivers, conducting for this purpose a series of training programs and examinations. According to her, new applicants for job openings at MMTC are preliminarily required to submit certain documents such as National Bureau of Investigation (NBI) clearance, birth or residence certificate, ID pictures, certificate or diploma of highest educational attainment, professional driver's license, and work experience certification. Re-entry applicants, aside from the foregoing requirements, are additionally supposed to submit company clearance for shortages and damages and revenue performance for the preceding year. Upon satisfactory compliance with said requisites, applicants are recommended for and subjected to a preliminary interview, followed by a record check to find out whether they are included in the list of undesirable employees given by other companies.

Thereafter, she continued, if an applicant is found to be acceptable, a final interview by the Chief Supervisor is scheduled and followed by a training program which consists of seminars and actual driving and psycho-physical tests and X-ray examinations. The seminars, which last for a total of eighteen (18) days, include familiarization with assigned routes, existing traffic rules and regulations, Constabulary Highway Patrol Group (CHPG) seminar on defensive driving, preventive maintenance, proper vehicle handling, interpersonal relationship and administrative rules on discipline and on-the-job training. Upon completion of all the seminars and tests, a final clearance is issued, an employment contract is executed and the driver is ready to report for duty.[8]

MMTC's Transport Supervisor, Christian Bautista, testified that it was his duty to monitor the daily operation of buses in the field, to countercheck the dispatcher on duty prior to the operation of the buses in the morning and to see to it that the bus crew follow written guidelines of the company, which include seeing to it that its employees are in proper uniform, briefed in traffic rules and regulations before the start of duty, fit to drive and, in general, follow other rules and regulations of the Bureau of Land Transportation as well as of the company.[9]

The reorganized trial court, in its decision of August 1, 1989,[10] found both drivers of the colliding vehicles concurrently negligent for non-observance of appropriate traffic rules and regulations and for failure to take the usual precautions when approaching an intersection. As joint tortfeasors, both drivers, as well as defendant Lamayo, were held solidarily liable for damages sustained by plaintiff Custodio. Defendant MMTC, on the bases of the evidence presented was, however, absolved from liability for the accident on the ground that it was not only careful and diligent in choosing and screening applicants for job openings but was also strict and diligent in supervising its employees by seeing to it that its employees were in proper uniforms, briefed in traffic rules and

regulations before the start of duty, and that it checked its employees to determine whether or not they were positive for alcohol and followed other rules and regulations and guidelines of the Bureau of Land Transportation and of the company.

The trial court accordingly ruled:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered dismissing the complaint against the Metro Manila Transit Corporation and ordering defendants Agudo P. Calebag, Victorino Lamayo and Godofredo C. Leonardo to pay plaintiffs, jointly and severally, the following:

- a). the sum of P10,000.00 by way of medical expenses;
- b). the sum of P5,000.00 by way of expenses of litigation;
- c). the sum of P15,000.00 by way of moral damages;
- d). the sum of P2,672.00 by way of loss of earnings;
- e). the sum of P5,000.00 by way of exemplary damages;
- f). the sum of P6,000.00 by way of attorney's fees; and
- g). costs of suit.

SO ORDERED." [11]

Plaintiff's motion to have that portion of the trial court's decision absolving MMTC from liability reconsidered [12] having been denied for lack of merit, [13] an appeal was filed by her with respondent appellate court. After consideration of the appropriate pleadings on appeal and finding the appeal meritorious, the Court of Appeals modified the trial court's decision by holding MMTC solidarily liable with the other defendants for the damages awarded by the trial court because of their concurrent negligence, concluding that while there is no hard and fast rule as to what constitutes sufficient evidence to prove that an employer has exercised the due diligence required of it in the selection and supervision of its employees, based on the quantum of evidence adduced the said appellate court was not disposed to say that MMTC had exercised the diligence required of a good father of a family in the selection and supervision of its driver, Godofredo Leonardo. [14]

The Court of Appeals was resolute in its conclusion and denied the motions for reconsideration of appellee Custodio and appellant MMTC in a resolution dated February 17, 1982, [15] thus prompting MMTC to file the instant petition invoking the review powers of this Court over the decision of the Court of Appeals, raising as issues for resolution whether or not (1) the documentary evidence to support the positive testimonies of witnesses Garbo and Bautista are still necessary; (2) the testimonies of witnesses Garbo and Bautista may still be disturbed on appeal; and (3) the evidence presented during the trial with respect to the proof of due diligence of petitioner MMTC in the selection and supervision of its employees, particularly driver Leonardo, is sufficient.

Prefatorily, private respondent questions the timeliness of the filing of the petition at bar in view of the procedural stricture that the timely perfection of an appeal is both a mandatory and jurisdictional requirement. This is a legitimate concern on the part of private respondent and presents an opportune occasion to once again clarify this point as there appears to be some confusion in the application of the rules and interpretative rulings regarding the computation of reglementary periods at this stage of the proceedings.

The records of this case reveal that the decision of respondent Court of Appeals, dated October 31, 1991, was received by MMTC on November 18, 1991 [16] and it seasonably filed a motion for the reconsideration thereof on November 28, 1991. [17] Said motion for reconsideration was denied by respondent court in its resolution dated

February 17, 1992, which in turn was received by MMTC on March 9, 1992.[18] Therefore, it had, pursuant to Section 1, Rule 45 of the Rules of Court, fifteen (15) days therefrom or up to March 24, 1992 within which to file a petition for review on certiorari. Anticipating, however, that it may not be able to file said petition before the lapse of the reglementary period therefor, MMTC filed a motion on March 19, 1992 for an extension of thirty (30) days to file the present petition, with proof of service of copies thereof to respondent court and the adverse parties. The Court granted said motion, with the extended period to be counted from the expiration of the reglementary period.[19] Consequently, private respondent had thirty (30) days from March 24, 1992 within which to file its petition, or up to April 23, 1992, and the eventual filing of said petition on April 14, 1992 was well within the period granted by the Court.

We digress to reiterate, in view of erroneous submissions that we continue to receive, that in the case of a petition for review on certiorari from a decision rendered by the Court of Appeals, Section 1, Rule 45 of the Rules of Court, which has long since been clarified in *Lacsamana vs. The Hon. Second Special Cases Division of the Intermediate Appellate Court, et al.*, [20] allows the same to be filed "within fifteen (15) days from notice of judgment or of the denial of the motion for reconsideration filed in due time, and paying at the same time the corresponding docket fee." In other words, in the event a motion for reconsideration is filed and denied, the period of fifteen (15) days begins to run all over again from notice of the denial resolution. Otherwise put, if a motion for reconsideration is filed, the reglementary period within which to appeal the decision of the Court of Appeals to the Supreme Court is reckoned from the date the party who intends to appeal received the order denying the motion for reconsideration.[21] Furthermore, a motion for extension of time to file a petition for review may be filed with this Court within said reglementary period, paying at the same time the corresponding docket fee.

1. The first two issues raised by petitioner shall be correlatively discussed in view of their interrelation.

In its present petition, MMTC insists that the oral testimonies of its employees who were presented as witnesses in its behalf sufficiently prove, even without the presentation of documentary evidence, that driver Leonardo had complied with all the hiring and clearance requirements and had undergone all trainings, tests and examinations preparatory to actual employment, and that said positive testimonies spell out the rigid procedure for screening of job applicants and the supervision of its employees in the field. It underscored the fact that it had indeed complied with the measure of diligence in the selection and supervision of its employees as enunciated in *Campo, et al. vs. Camarote, et al.* [22] requiring an employer, in the exercise of the diligence of a good father of a family, to carefully examine the applicant for employment as to his qualifications, experience and record service, and not merely be satisfied with the possession of a professional driver's license.

It goes on to say that since the testimonies of these witnesses were allegedly neither discredited nor impeached by the adverse party, they should be believed and not arbitrarily disregarded or rejected nor disturbed on appeal. It assiduously argues that inasmuch as there is no law requiring that facts alleged by petitioner be established by documentary evidence, the probative force and weight of their testimonies should not be discredited, with the further note that the lower court having passed upon the relevancy of the oral testimonies and considered the same as un rebutted, its consideration should no longer be disturbed on appeal.[23]

Private respondent, on the other hand, retorts that the factual findings of respondent court are conclusive upon the High Court which cannot be burdened with the task of analyzing and weighing the evidence all over again.[24]

At this juncture, it suffices to note that factual findings of the trial court may be reversed by the Court of Appeals, which is vested by law with the power to review both legal and factual issues, if on the evidence of record, it appears that the trial court may have been mistaken[25] particularly in the appreciation of evidence, which is within the domain of the Court of Appeals.[26] The general rule laid down in a plethora of cases is that such

findings of fact by the Court of Appeals are conclusive upon and beyond the power of review of the Supreme Court.[27] However, it is now well-settled that while the findings of fact of the Court of Appeals are entitled to great respect, and even finality at times, that rule is not inflexible and is subject to well established exceptions, to wit: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record.[28]

When, as in this case, the findings of the Court of Appeals and the trial court are contrary to each other, this court may scrutinize the evidence on record,[29] in order to arrive at a correct finding based thereon.[30]

A perusal of the same shows that since there is no dispute as to the finding of concurrent negligence on the part of the defendant Calebag, the driver of the passenger jeepney, and co-defendant Leonardo, the bus driver of petitioner MMTC, both of whom were solidarily held liable with defendant Lamayo, the owner of the jeepney, we are spared the necessity of determining the sufficiency of evidence establishing the fact of negligence.[31] The contrariety is in the findings of the two lower courts, and which is the subject of this present controversy, with regard to the liability of MMTC as employer of one the erring drivers.

The trial court, in absolving MMTC from liability ruled that -?

"On the question as to whether defendant MMTC was successful in proving its defense that indeed it had exercised the due diligence of a good father of a family in the selection and supervision of defendant Leonardo, this Court finds that based on the evidence presented during the trial, defendant MMTC was able to prove that it was not only careful and diligent in choosing and screening applicants for job openings but also strict (and) diligent in supervising its employees by seeing to it that its employees were in proper uniforms, briefed in traffic rules and regulations before the start of duty, checked employees to determine whether they were positive for alcohol and followed other rules and regulations and guidelines of the Bureau of Land Transportation as well as its company. Having successfully proven such defense, defendant MMTC, therefore, cannot be held liable for the accident.

"Having reached this conclusion, the Court now holds that defendant MMTC be totally absolved from liability and that the complaint against it be dismissed. x x x." [32]

whereas respondent court was of the opinion that --

"It is surprising though that witness Milagros Garbo did not testify nor present any evidence that defendant-appellee's driver, defendant Godofredo Leonardo has complied with or has undergone all clearances and trainings she referred to. The clearances, result of seminars and tests which Godofredo Leonardo submitted and complied with, if any, were not presented in court despite the fact that they are obviously in the possession and control of defendant-appellee. Instead, it resorted to generalities. This Court has ruled that due diligence in (the) selection and supervision of employee(s) are not proved by mere testimonies to the effect that its applicant has complied with all the company requirements before one is admitted as an employee but without proof thereof. x x x.

"On the part of Christian Bautista, the transport supervisor of defendant-appellee, he testified that it is his duty to monitor the operation of buses in the field; to countercheck the dispatchers duty prior to the operation of the

buses in the morning; to see to it that bus crew follows written guidelines of the company (t.s.n., April 29, 1988, pp. 4-5), but when asked to present in court the alleged written guidelines of the company he merely stated that he brought with him a 'wrong document' and defendant-appellee's counsel asked for reservation to present such written guidelines in the next hearing but the same was (sic) never presented in court." [33]

A thorough and scrupulous review of the records of this case reveals that the conclusion of respondent Court of Appeals is more firmly grounded on jurisprudence and amply supported by the evidence of record than that of the court below.

It is procedurally required for each party in a case to prove his own affirmative assertion by the degree of evidence required by law.[34] In civil cases, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is, therefore, incumbent on the plaintiff who is claiming a right to prove his case. Corollarily, defendant must likewise prove its own allegation to buttress its claim that it is not liable.[35]

In fine, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment.[36] It is entirely within each of the parties' discretion, consonant with the theory of the case it or he seeks to advance and subject to such procedural strategy followed thereby, to present all available evidence at its or his disposal in the manner which may be deemed necessary and beneficial to prove its or his position, provided only that the same shall measure up to the quantum of evidence required by law. In making proof in its or his case, it is paramount that the best and most complete evidence be formally entered.[37]

Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, or even object evidence for that matter, inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees.[38] Petitioner's attempt to prove its diligentissimi patris familias in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.[39]

Our view that the evidence for petitioner MMTC falls short of the required evidentiary quantum as would convincingly and undoubtedly prove its observance of the diligence of a good father of a family has its precursor in the underlying rationale pronounced in the earlier case of *Central Taxicab Corp. vs. Ex-Meralco Employees Transportation Co., et al.*, [40] set amidst an almost identical factual setting, where we held that:

"x x x. This witness spoke of an 'affidavit of experience' which a driver-applicant must accomplish before he is employed by the company, a written 'time schedule' for each bus, and a record of the inspections and thorough checks pertaining to each bus before it leaves the car barn; yet no attempt was ever made to present in evidence any of these documents, despite the fact that they were obviously in the possession and control of the defendant company.

x x x

"Albert also testified that he kept records of the preliminary and final tests given him as well as a record of the qualifications and experience of each of the drivers of the company. It is rather strange, therefore, that he failed to produce in court the all important record of Roberto, the driver involved in this case.

"The failure of the defendant company to produce in court any 'record' or other documentary proof tending to establish that it had exercised all the diligence of a good father of a family in the selection and supervision of its drivers and buses, notwithstanding the calls therefor by both the trial court and the opposing counsel, argues

strongly against its pretensions.

"We are fully aware that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has by his negligence, caused damage to another. x x x (R)educing the testimony of Albert to its proper proportions, we do not have enough trustworthy evidence left to go by. We are of the considered opinion, therefore, that the believable evidence on the degree of care and diligence that has been exercised in the selection and supervision of Roberto Leon y Salazar, is not legally sufficient to overcome the presumption of negligence against the defendant company."

Whether or not the diligence of a good father of a family has been observed by petitioner is a matter of proof which under the circumstances in the case at bar has not been clearly established. It is not felt by the Court that there is enough evidence on record as would overturn the presumption of negligence, and for failure to submit all evidence within its control, assuming the putative existence thereof, petitioner MMTC must suffer the consequences of its own inaction and indifference.

2. In any event, we do not find the evidence presented by petitioner sufficiently convincing to prove the diligence of a good father of a family, which for an employer doctrinally translates into its observance of due diligence in the selection and supervision of its employees but which mandate, to use an oft-quoted phrase, is more often honored in the breach than in the observance.

Petitioner attempted to essay in detail the company's procedure for screening job applicants and supervising its employees in the field, through the testimonies of Milagros Garbo, as its training officer, and Christian Bautista, as its transport supervisor, both of whom naturally and expectedly testified for MMTC. It then concluded with its sweeping pontifications that "thus, there is no doubt that considering the nature of the business of petitioner, it would not let any applicant-drivers to be (sic) admitted without undergoing the rigid selection and training process with the end (in) view of protecting the public in general and its passengers in particular; x x x thus, there is no doubt that applicant had fully complied with the said requirements otherwise Garbo should not have allowed him to undertake the next set of requirements x x x and the training conducted consisting of seminars and actual driving tests were satisfactory otherwise he should have not been allowed to drive the subject vehicle."[41]

These statements strike us as both presumptuous and in the nature of *petitio principii*, couched in generalities and shorn of any supporting evidence to boost their verity. As earlier observed, respondent court could not but express surprise, and thereby its incredulity, that witness Garbo neither testified nor presented any evidence that driver Leonardo had complied with or had undergone all the clearances and trainings she took pains to recite and enumerate. The supposed clearances, results of seminars and tests which Leonardo allegedly submitted and complied with were never presented in court despite the fact that, if true, then they were obviously in the possession and control of petitioner.[42]

The case at bar is clearly within the coverage of Articles 2176 and 2177, in relation to Article 2180, of the Civil Code provisions on quasi-delicts, as all the elements thereof are present, to wit: (1) damages suffered by the plaintiff, (2) fault or negligence of the defendant or some other person for whose act he must respond, and (3) the connection of cause and effect between fault or negligence of the defendant and the damages incurred by plaintiff.[43] It is to be noted that petitioner was originally sued as employer of driver Leonardo under Article 2180, the pertinent parts of which provide that:

"The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x

"Employers shall be liable for damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x

"The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

The basis of the employer's vicarious liability has been explained under this ratiocination:

"The responsibility imposed by this article arises by virtue of a presumption juris tantum of negligence on the part of the persons made responsible under the article, derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage. Negligence is imputed to them by law, unless they prove the contrary. Thus, the last paragraph of the article says that such responsibility ceases if it is proved that the persons who might be held responsible under it exercised the diligence of a good father of a family (*diligentissimi patris familias*) to prevent damage. It is clear, therefore, that it is not representation, nor interest, nor even the necessity of having somebody else answer for the damages caused by the persons devoid of personality, but it is the non-performance of certain duties of precaution and prudence imposed upon the persons who become responsible by civil bond uniting the actor to them, which forms the foundation of such responsibility." [44]

The above rule is, of course, applicable only where there is an employer-employee relationship, although it is not necessary that the employer be engaged in business or industry. Whether or not engaged in any business or industry, the employer under Article 2180 is liable for torts committed by his employees within the scope of their assigned tasks. But, it is necessary first to establish the employment relationship. Once this is done, the plaintiff must show, to hold the employer liable, that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees. [45] The diligence of a good father of a family required to be observed by employers to prevent damages under Article 2180 refers to due diligence in the selection and supervision of employees in order to protect the public. [46]

With the allegation and subsequent proof of negligence against the defendant driver and of an employer-employee relation between him and his co-defendant MMTC in this instance, the case is undoubtedly based on a quasi-delict under Article 2180. [47] When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, [48] rebuttable only by proof of observance of the diligence of a good father of a family. For failure to rebut such legal presumption of negligence in the selection and supervision of employees, the employer is likewise responsible for damages, [49] the basis of the liability being the relationship of *pater familias* or on the employer's own negligence. [50]

As early as the case of *Gutierrez vs. Gutierrez*, [51] and thereafter, we have consistently held that where the injury is due to the concurrent negligence of the drivers of the colliding vehicles, the drivers and owners of the said vehicles shall be primarily, directly and solidarily liable for damages and it is immaterial that one action is based on quasi-delict and the other on *culpa contractual*, as the solidarity of the obligation is justified by the very nature thereof. [52]

It should be borne in mind that the legal obligation of employers to observe due diligence in the selection and supervision of employees is not to be considered as an empty play of words or a mere formalism, as appears to be the fashion of the times, since the non-observance thereof actually becomes the basis of their vicarious liability under Article 2180.

On the matter of selection of employees, *Campo vs. Camarote*, *supra*, lays down this admonition:

"x x x . In order that the owner of a vehicle may be considered as having exercised all diligence of a good father of a family, he should not have been satisfied with the mere possession of a professional driver's license; he should have carefully examined the applicant for employment as to his qualifications, his experience and record of service. These steps appellant failed to observe; he has therefore, failed to exercise all due diligence required of a good father of a family in the choice or selection of driver."

Due diligence in the supervision of employees, on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer.[53] To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.

In order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, it is not enough to emptily invoke the existence of said company guidelines and policies on hiring and supervision. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. The mere allegation of the existence of hiring procedures and supervisory policies, without anything more, is decidedly not sufficient to overcome such presumption.

We emphatically reiterate our holding, as a warning to all employers, that "(t)he mere formulation of various company policies on safety without showing that they were being complied with is not sufficient to exempt petitioner from liability arising from negligence of its employees. It is incumbent upon petitioner to show that in recruiting and employing the erring driver the recruitment procedures and company policies on efficiency and safety were followed." [54] Paying lip-service to these injunctions or merely going through the motions of compliance therewith will warrant stern sanctions from the Court.

These obligations, imposed by the law and public policy in the interests and for the safety of the commuting public, herein petitioner failed to perform. Respondent court was definitely correct in ruling that "x x x due diligence in the selection and supervision of employee (is) not proved by mere testimonies to the effect that its applicant has complied with all the company requirements before one is admitted as an employee but without proof thereof." [55] It is further a distressing commentary on petitioner that it is a government-owned public utility, maintained by public funds, and organized for the public welfare.

The Court feels it is necessary to once again stress the following rationale behind these all-important statutory and jurisprudential mandates, for it has been observed that despite its pronouncement in *Kapalaran Bus Line vs. Coronado, et al.*, supra, there has been little improvement in the transport situation in the country:

"In requiring the highest possible degree of diligence from common carriers and creating a presumption of negligence against them, the law compels them to curb the recklessness of their drivers. While the immediate beneficiaries of the standard of extraordinary diligence are, of course, the passengers and owners of the cargo carried by a common carrier, they are not the only persons that the law seeks to benefit. For if common carriers carefully observe the statutory standard of extraordinary diligence in respect of their own passengers, they cannot help but simultaneously benefit pedestrians and the owners and passengers of other vehicles who are equally entitled to the safe and convenient use of our roads and highways. The law seeks to stop and prevent the slaughter and maiming of people (whether passengers or not) and the destruction of property (whether freight or not) on our highways by buses, the very size and power of which seem often to inflame the minds of their drivers. x x x."

Finally, we believe that respondent court acted in the exercise of sound discretion when it affirmed the trial court's award, without requiring the payment of interest thereon as an item of damages just because of delay in the determination thereof, especially since private respondent did not specifically pray therefor in her complaint. Article 2211 of the Civil Code provides that in quasi-delicts, interest as a part of the damages may be awarded in the discretion of the court, and not as a matter of right. We do not perceive that there have been intentional dilatory maneuvers or any special circumstances which would justify that additional award and, consequently, we find no reason to disturb said ruling.

WHEREFORE, the impugned decision of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), and Nocon, J., concur.

Padilla, J., on leave.

[1] Rollo, 24-25.

[2] Civil Case No. C-8176, entitled "Nenita R. Custodio, assisted by her parents, Rodolfo A. Custodio and Gloria R. Custodio vs. Agudo R. Calebag, Victorino Lamayo, Godofredo C. Leonardo, and Metro Manila Transit Corporation," Court of First Instance of Rizal, Branch 35, Caloocan City; Original Record, 1-4.

[3] Ibid., 17-22.

[4] Ibid., 36-41.

[5] Ibid., 54.

[6] Ibid., 57.

[7] TSN, September 2, 1982, 4-16.

[8] Ibid., June 10, 1988, 3-12.

[9] Ibid., April 29, 1988, 2-8.

[10] Civil Case No. 8176, Regional Trial Court, Branch 125, Caloocan City; Judge Geronimo S. Mangay, presiding.

[11] Original Record, 177.

[12] Ibid., 178-181.

[13] Ibid., 195.

[14] CA-G.R. CV No. 24680; per Justice Regina G. Ordoñez-Benitez, with Justices Jose A.R. Melo and Emilio C. Cui, concurring; Rollo, 24-30.

[15] Rollo, 33-34.

[16] Ibid., 2.

[17] Ibid., CA-G.R. CV No. 24680, 63-72.

[18] Rollo, 2.

[19] *Ibid.*, 7.

[20] 143 SCRA 643 (1986).

[21] *American General Insurance Co. vs. Intermediate Appellate Court, et al.*, 150 SCRA 133 (1987).

[22] 100 Phil. 459 (1956).

[23] Memorandum for Petitioner, 11-15; Rollo, 16-21.

[24] Comment of Private Respondent, 3-4; Rollo, 47-48.

[25] *San Miguel Corporation vs. Court of Appeals, et al.*, 185 SCRA 722 (1990).

[26] *Medina vs. Asistio, Jr., et al.*, 191 SCRA 218 (1990).

[27] *Cathay Insurance Co. vs. Court of Appeals, et al.*, 151 SCRA 710 (1987); *Hernandez vs. Court of Appeals, et al.*, 160 SCRA 821 (1988); *Philippine National Bank vs. Court of Appeals, et al.*, 183 SCRA 133 (1990); *BA Finance Corporation vs. Court of Appeals, et al.*, 201 SCRA 157 (1991).

[28] *Manlapaz vs. Court of Appeals, et al.*, 147 SCRA 236 (1987); *Medina vs. Asistio, Jr.*, *supra*; *Calalang vs. Intermediate Appellate Court, et al.*, 194 SCRA 514 (1991).

[29] *Valenzuela, et al. vs. Court of Appeals, et al.*, 191 SCRA 1 (1991).

[30] *Roman Catholic Bishop of Malolos, et al. vs. Intermediate Appellate Court, et al.*, 191 SCRA 411 (1990).

[31] *Cea vs. Villanueva*, 18 Phil. 538 (1911); *Barcelo, etc. vs. The Manila Electric Railroad and Light Company*, 29 Phil. 351 (1915); *De la Riva vs. Molina*, 32 Phil. 277 (1915); *Agdoro vs. Philippine Mining Industrial Co.*, 45 Phil. 816 (1924).

[32] Annex C, Petition; Rollo, 41-42.

[33] Annex B, *Ibid.*; *id.*, 28-29.

[34] Section 1, Rule 131, Rules of Court.

[35] *Stronghold Insurance Company, Inc. vs. Court of Appeals, et al.*, 173 SCRA 619 (1989).

[36] *Republic vs. Court of Appeals, et al.*, 182 SCRA 290 (1990), citing *Tai Tong Chuache & Co. vs. The Insurance Commission, et al.*, 158 SCRA 366 (1988); *Republic vs. Court of Appeals, et al.*, 204 SCRA 160 (1991).

[37] *U.S. vs. Tria*, 17 Phil. 303 (1910).

[38] See *Pleno vs. Court of Appeals, et al.*, 161 SCRA 160 (1991).

[39] See *Garcia, et al. vs. Gonzales, et al.*, 183 SCRA 72 (1990).

[40] 54 O.G., No. 31, 7415 (1958).

[41] Petition, 6-7; Rollo, 14-15.

[42] *Supra*, Fn. 34.

[43] *Andamo, et al. vs. Intermediate Appellate Court, et al.*, 191 SCRA 195 (1990).

[44] Tolentino, A., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, 1959 ed., 519

[45] *Martin vs. Court of Appeals, et al.*, 205 SCRA 591 (1992).

[46] *Barredo vs. Garcia*, 73 Phil. 607 (1942).

[47] *Lanuzo vs. Ping, et al.*, 100 SCRA 205 (1980).

[48] *Bahia vs. Litonjua, et al.*, 30 Phil. 624 (1915); *Campo vs. Camarote, supra*; *Phoenix Construction, Inc. vs. Intermediate Appellate Court, et al.*, 148 SCRA 353 (1987); *McKee, et al. vs. Intermediate Appellate Court, et al.*, 211 SCRA 517 (1992).

[49] *Lanuzo vs. Ping, et al., supra*, and cases cited therein.

[50] *Bahia vs. Litonjua, et al., supra*; *Yamada vs. Manila Railroad Co.*, 33 Phil. 8 (1915); *McKee, et al. vs. Intermediate Appellate Court, et al., supra*.

[51] 56 Phil. 177 (1931); Cf. *Barredo vs. Garcia, supra*; *Viluan vs. Court of Appeals, et al.*, 16 SCRA 742 (1966); *Anuran vs. Buño*, 17 SCRA 224 (1966); *Malipol vs. Tan*, 55 SCRA 202 (1974); *Poblete vs. Fabron*, 93 SCRA 200 (1979); *Pleno vs. Court of Appeals, et al., supra*; *Kapalaran Bus Line vs. Coronado*, 176 SCRA 792 (1989).

[52] Art. 1207, Civil Code.

[53] *Filamer Christian Institute vs. Intermediate Appellate Court, et al.*, 212 SCRA 637 (1992).

[54] *Pantranco North Express Inc. vs. Baesa*, 179 SCRA 384 (1989). See also *Franco, et al. vs. Intermediate Appellate Court, et al.*, 178 SCRA 331 (1989).

[55] *Rollo*, 28.

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