

MA. LOURDES VALENZUELA, PETITIONER, VS. COURT OF APPEALS, RICHARD LI AND ALEXANDER COMMERCIAL, INC., RESPONDENTS.

G.R. No. 115024. February 07, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

These two petitions for review on certiorari under Rule 45 of the Revised Rules of Court stem from an action to recover damages by petitioner Lourdes Valenzuela in the Regional Trial Court of Quezon City for injuries sustained by her in a vehicular accident in the early morning of June 24, 1990. The facts found by the trial court are succinctly summarized by the Court of Appeals below:

This is an action to recover damages based on quasi-delict, for serious physical injuries sustained in a vehicular accident.

Plaintiff's version of the accident is as follows: At around 2:00 in the morning of June 24, 1990, plaintiff Ma. Lourdes Valenzuela was driving a blue Mitsubishi lancer with Plate No. FFU 542 from her restaurant at Marcos highway to her home at Palanza Street, Araneta Avenue. She was travelling along Aurora Blvd. with a companion, Cecilia Ramon, heading towards the direction of Manila. Before reaching A. Lake Street, she noticed something wrong with her tires; she stopped at a lighted place where there were people, to verify whether she had a flat tire and to solicit help if needed. Having been told by the people present that her rear right tire was flat and that she cannot reach her home in that car's condition, she parked along the sidewalk, about 1½ feet away, put on her emergency lights, alighted from the car, and went to the rear to open the trunk. She was standing at the left side of the rear of her car pointing to the tools to a man who will help her fix the tire when she was suddenly bumped by a 1987 Mitsubishi Lancer driven by defendant Richard Li and registered in the name of defendant Alexander Commercial, Inc. Because of the impact plaintiff was thrown against the windshield of the car of the defendant, which was destroyed, and then fell to the ground. She was pulled out from under defendant's car. Plaintiff's left leg was severed up to the middle of her thigh, with only some skin and muscle connected to the rest of the body. She was brought to the UERM Medical Memorial Center where she was found to have a "traumatic amputation, leg, left up to distal thigh (above knee)." She was confined in the hospital for twenty (20) days and was eventually fitted with an artificial leg. The expenses for the hospital confinement (P 120,000.00) and the cost of the artificial leg (P27,000.00) were paid by defendants from the car insurance.

In her complaint, plaintiff prayed for moral damages in the amount of P1 million, exemplary damages in the amount of P100,000.00 and other medical and related expenses amounting to a total of P180,000.00, including loss of expected earnings.

Defendant Richard Li denied that he was negligent. He was on his way home, travelling at 55 kph; considering that it was raining, visibility was affected and the road was wet. Traffic was light. He testified that he was driving along the inner portion of the right lane of Aurora Blvd. towards the direction of Araneta Avenue, when he was suddenly confronted, in the vicinity of A. Lake Street, San Juan, with a car coming from the opposite direction, travelling at 80 kph, with "full bright lights." Temporarily blinded, he instinctively swerved to the right to avoid colliding with the oncoming vehicle, and bumped plaintiff's car, which he did not see

because it was midnight blue in color, with no parking lights or early warning device, and the area was poorly lighted. He alleged in his defense that the left rear portion of plaintiff's car was protruding as it was then "at a standstill diagonally" on the outer portion of the right lane towards Araneta Avenue (par. 18, Answer). He confirmed the testimony of plaintiff's witness that after being bumped the car of the plaintiff swerved to the right and hit another car parked on the sidewalk. Defendants counterclaimed for damages, alleging that plaintiff was reckless or negligent, as she was not a licensed driver.

The police investigator, Pfc. Felic Ramos, who prepared the vehicular accident report and the sketch of the three cars involved in the accident, testified that the plaintiff's car was "near the sidewalk"; this witness did not remember whether the hazard lights of plaintiff's car were on, and did not notice if there was an early warning device; there was a street light at the corner of Aurora Blvd. and F. Roman, about 100 meters away. It was not mostly dark, i.e. "things can be seen" (p. 16, tsn, Oct. 28, 1991).

A witness for the plaintiff, Rogelio Rodriguez, testified that after plaintiff alighted from her car and opened the trunk compartment, defendant's car came approaching very fast ten meters from the scene; the car was "zigzagging." The rear left side of plaintiff's car was bumped by the front right portion of defendant's car; as a consequence, the plaintiff's car swerved to the right and hit the parked car on the sidewalk. Plaintiff was thrown to the windshield of defendant's car, which was destroyed, and landed under the car. He stated that defendant was under the influence of liquor as he could "smell it very well" (pp. 43, 79, tsn., June 17, 1991).

After trial, the lower court sustained the plaintiff's submissions and found defendant Richard Li guilty of gross negligence and liable for damages under Article 2176 of the Civil Code. The trial court likewise held Alexander Commercial, Inc., Li's employer, jointly and severally liable for damages pursuant to Article 2180. It ordered the defendants to jointly and severally pay the following amounts:

1. P41,840.00, as actual damages, representing the miscellaneous expenses of the plaintiff as a result of her severed left leg;
2. The sums of (a) P37,500.00, for the unrealized profits because of the stoppage of plaintiff's Bistro La Conga restaurant three (3) weeks after the accident on June 24, 1990; (b) P20,000.00, a month, as unrealized profits of the plaintiff in her Bistro La Conga restaurant, from August, 1990 until the date of this judgment; and (c) P30,000.00, a month, for unrealized profits in plaintiff's two (2) beauty salons from July, 1990 until the date of this decision;
3. P1,000,000.00, in moral damages;
4. P50,000.00, as exemplary damages,
5. P60,000.00, as reasonable attorney's fees; and
6. Costs.

As a result of the trial court's decision, defendants filed an Omnibus Motion for New Trial and for Reconsideration, citing testimony in Criminal Case O.C. No. 804367 (People vs. Richard Li), tending to show that the point of impact, as depicted by the pieces of glass/debris from the parties' cars, appeared to be at the center of the right lane of Aurora Blvd. The trial court denied the motion. Defendants forthwith filed an appeal with the respondent Court of Appeals. In a Decision rendered March 30, 1994, the Court of Appeals found that there was "ample basis from the evidence of record for the trial court's finding that the plaintiff's car was properly parked at the right, beside the sidewalk when it was bumped by defendant's car." [1] Dismissing the defendants' argument that the plaintiff's car was improperly parked, almost at the center of the road, the respondent court noted that evidence which was supposed to prove that the car was at or near center of the right lane was never presented during the trial of the case. [2] The respondent court furthermore observed that:

Defendant Li's testimony that he was driving at a safe speed of 55 km./hour is self serving; it was not corroborated. It was in fact contradicted by eyewitness Rodriguez who stated that he was outside his beerhouse located at Aurora Boulevard after A. Lake Street, at or about 2:00 a.m. of June 24, 1990 when his attention was caught by a beautiful lady (referring to the plaintiff) alighting from her car and opening the trunk compartment; he noticed the car of Richard Li "approaching very fast ten (10) meters away from the scene"; defendant's car was zigzagging, although there were no holes and hazards on the street, and "bumped the leg of the plaintiff" who was thrown against the windshield of defendant's car, causing its destruction. He came to the rescue of the plaintiff, who was pulled out from under defendant's car and was able to say "hurting words" to Richard Li because he noticed that the latter was under the influence of liquor, because he "could smell it very well" (p. 36, et. seq., tsn, June 17, 1991). He knew that plaintiff owned a beerhouse in Sta. Mesa in the 1970's, but did not know either plaintiff or defendant Li before the accident.

In agreeing with the trial court that the defendant Li was liable for the injuries sustained by the plaintiff, the Court of Appeals, in its decision, however, absolved the Li's employer, Alexander Commercial, Inc. from any liability towards petitioner Lourdes Valenzuela and reduced the amount of moral damages to P500,000.00. Finding justification for exemplary damages, the respondent court allowed an award of P50,000.00 for the same, in addition to costs, attorney's fees and the other damages. The Court of Appeals, likewise, dismissed the defendants' counterclaims.[3]

Consequently, both parties assail the respondent court's decision by filing two separate petitions before this Court. Richard Li, in G.R. No. 117944, contends that he should not be held liable for damages because the proximate cause of the accident was Ma. Lourdes Valenzuela's own negligence. Alternatively, he argues that in the event that this Court finds him negligent, such negligence ought to be mitigated by the contributory negligence of Valenzuela.

On the other hand, in G.R. No. 115024, Ma. Lourdes Valenzuela assails the respondent court's decision insofar as it absolves Alexander Commercial, Inc. from liability as the owner of the car driven by Richard Li and insofar as it reduces the amount of the actual and moral damages awarded by the trial court.[4]

As the issues are intimately related, both petitions are hereby consolidated. It is plainly evident that the petition for review in G.R. No. 117944 raises no substantial questions of law. What it, in effect, attempts to have this Court review are factual findings of the trial court, as sustained by the Court of Appeals finding Richard Li grossly negligent in driving the Mitsubishi Lancer provided by his company in the early morning hours of June 24, 1990. This we will not do. As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon us, and this Court will not normally disturb such factual findings unless the findings of fact of the said court are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts.[5]

In the first place, Valenzuela's version of the incident was fully corroborated by an uninterested witness, Rogelio Rodriguez, the owner-operator of an establishment located just across the scene of the accident. On trial, he testified that he observed a car being driven at a "very fast" speed, racing towards the general direction of Araneta Avenue.[6] Rodriguez further added that he was standing in front of his establishment, just ten to twenty feet away from the scene of the accident, when he saw the car hit Valenzuela, hurtling her against the windshield of the defendant's Mitsubishi Lancer, from where she eventually fell under the defendant's car. Spontaneously reacting to the incident, he crossed the street, noting that a man reeking with the smell of liquor had alighted from the offending vehicle in order to survey the incident.[7] Equally important, Rodriguez declared that he observed Valenzuela's car parked parallel and very near the sidewalk,[8] contrary to Li's allegation that Valenzuela's car was close to the center of the right lane. We agree that as between Li's "self-serving" asseverations and the observations of a witness who did not even know the accident victim personally and who immediately gave a

statement of the incident similar to his testimony to the investigator immediately after the incident, the latter's testimony deserves greater weight. As the court emphasized:

The issue is one of credibility and from Our own examination of the transcript, We are not prepared to set aside the trial court's reliance on the testimony of Rodriguez negating defendant's assertion that he was driving at a safe speed. While Rodriguez drives only a motorcycle, his perception of speed is not necessarily impaired. He was subjected to cross-examination and no attempt was made to question his competence or the accuracy of his statement that defendant was driving "very fast." This was the same statement he gave to the police investigator after the incident, as told to a newspaper report (Exh. "P"). We see no compelling basis for disregarding his testimony.

The alleged inconsistencies in Rodriguez' testimony are not borne out by an examination of the testimony. Rodriguez testified that the scene of the accident was across the street where his beerhouse is located about ten to twenty feet away (pp. 35-36, tsn, June 17, 1991). He did not state that the accident transpired immediately in front of his establishment. The ownership of the Lambingan sa Kambingan is not material; the business is registered in the name of his mother, but he explained that he owns the establishment (p. 5, tsn., June 20, 1991).

Moreover, the testimony that the streetlights on his side of Aurora Boulevard were on the night the accident transpired (p. 8) is not necessarily contradictory to the testimony of Pfc. Ramos that there was a streetlight at the corner of Aurora Boulevard and F. Roman Street (p. 45, tsn., Oct. 20, 1991).

With respect to the weather condition, Rodriguez testified that there was only a drizzle, not a heavy rain and the rain has stopped and he was outside his establishment at the time the accident transpired (pp. 64-65, tsn., June 17, 1991). This was consistent with plaintiffs testimony that it was no longer raining when she left Bistro La Conga (pp. 10-11, tsn., April 29, 1991). It was defendant Li who stated that it was raining all the way in an attempt to explain why he was travelling at only 50-55 kph. (p. 11, tsn., Oct. 14, 1991). As to the testimony of Pfc. Ramos that it was raining, he arrived at the scene only in response to a telephone call after the accident had transpired (pp. 9-10, tsn, Oct. 28, 1991). We find no substantial inconsistencies in Rodriguez's testimony that would impair the essential integrity of his testimony or reflect on his honesty. We are compelled to affirm the trial court's acceptance of the testimony of said eyewitness.

Against the unassailable testimony of witness Rodriguez we note that Li's testimony was peppered with so many inconsistencies leading us to conclude that his version of the accident was merely adroitly crafted to provide a version, obviously self-serving, which would exculpate him from any and all liability in the incident. Against Valenzuela's corroborated claims, his allegations were neither backed up by other witnesses nor by the circumstances proven in the course of trial. He claimed that he was driving merely at a speed of 55 kph. when "out of nowhere he saw a dark maroon lancer right in front of him, which was (the) plaintiff's car." He alleged that upon seeing this sudden "apparition" he put on his brakes to no avail as the road was slippery.[9]

One will have to suspend disbelief in order to give credence to Li's disingenuous and patently self-serving asseverations. The average motorist alert to road conditions will have no difficulty applying the brakes to a car traveling at the speed claimed by Li. Given a light rainfall, the visibility of the street, and the road conditions on a principal metropolitan thoroughfare like Aurora Boulevard, Li would have had ample time to react to the changing conditions of the road if he were alert - as every driver should be - to those conditions. Driving exacts a more than usual toll on the senses. Physiological "fight or flight"[10] mechanisms are at work, provided such mechanisms were not dulled by drugs, alcohol, exhaustion, drowsiness, etc.[11] Li's failure to react in a manner which would have avoided the accident could therefore have been only due to either or both of the two factors: 1) that he was driving at a "very fast" speed as testified by Rodriguez; and 2) that he was under the influence of alcohol.[12] Either factor working independently would have diminished his responsiveness to road conditions,

since normally he would have slowed down prior to reaching Valenzuela's car, rather than be in a situation forcing him to suddenly apply his brakes. As the trial court noted (quoted with approval by respondent court):

Secondly, as narrated by defendant Richard Li to the San Juan Police immediately after the incident, he said that while driving along Aurora Blvd., out of nowhere he saw a dark maroon lancer right in front of him, which was plaintiffs car, indicating, again, thereby that, indeed, he was driving very fast, oblivious of his surroundings and the road ahead of him, because if he was not, then he could not have missed noticing at a still far distance the parked car of the plaintiff at the right side near the sidewalk which had its emergency lights on, thereby avoiding forcefully bumping at the plaintiff who was then standing at the left rear edge of her car.

Since, according to him, in his narration to the San Juan Police, he put on his brakes when he saw the plaintiffs car in front of him, but that it failed as the road was wet and slippery, this goes to show again, that, contrary to his claim, he was, indeed, running very fast. For, were it otherwise, he could have easily completely stopped his car, thereby avoiding the bumping of the plaintiff, notwithstanding that the road was wet and slippery. Verily, since, if, indeed, he was running slow, as he claimed, at only about 55 kilometers per hour, then, in spite of the wet and slippery road, he could have avoided hitting the plaintiff by the mere expedient or applying his brakes at the proper time and distance.

It could not be true, therefore, as he now claims during his testimony, which is contrary to what he told the police immediately after the accident and is, therefore, more believable, that he did not actually step on his brakes, but simply swerved a little to the right when he saw the on-coming car with glaring headlights, from the opposite direction, in order to avoid it.

For, had this been what he did, he would not have bumped the car of the plaintiff which was properly parked at the right beside the sidewalk. And, it was not even necessary for him to swerve a little to the right in order to safely avoid a collision with the on-coming car, considering that Aurora Blvd. is a double lane avenue separated at the center by a dotted white paint, and there is plenty of space for both cars, since her car was running at the right lane going towards Manila and the on-coming car was also on its right lane going to Cubao." [13]

Having come to the conclusion that Li was negligent in driving his company-issued Mitsubishi Lancer, the next question for us to determine is whether or not Valenzuela was likewise guilty of contributory negligence in parking her car alongside Aurora Boulevard, which entire area Li points out, is a no parking zone.

We agree with the respondent court that Valenzuela was not guilty of contributory negligence.

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. [14] Based on the foregoing definition, the standard or act to which, according to petitioner Li, Valenzuela ought to have conformed for her own protection was not to park at all at any point of Aurora Boulevard, a no parking zone. We cannot agree.

Courts have traditionally been compelled to recognize that an actor who is confronted with an emergency is not to be held up to the standard of conduct normally applied to an individual who is in no such situation. The law takes stock of impulses of humanity when placed in threatening or dangerous situations and does not require the same standard of thoughtful and reflective care from persons confronted by unusual and oftentimes threatening conditions.[15] Under the "emergency rule" adopted by this Court in *Gan vs Court of Appeals*, [16] an individual who suddenly finds himself in a situation of danger and is required to act without much time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to undertake what subsequently and upon reflection may appear to be a better solution, unless the emergency was brought by his own negligence.[17]

Applying this principle to a case in which the victims in a vehicular accident swerved to the wrong lane to avoid hitting two children suddenly darting into the street, we held, in *Mc Kee vs. Intermediate Appellate Court*,^[18] that the driver therein, Jose Koh, "adopted the best means possible in the given situation" to avoid hitting the children. Using the "emergency rule" the court concluded that Koh, in spite of the fact that he was in the wrong lane when the collision with an oncoming truck occurred, was not guilty of negligence.^[19]

While the emergency rule applies to those cases in which reflective thought, or the opportunity to adequately weigh a threatening situation is absent, the conduct which is required of an individual in such cases is dictated not exclusively by the suddenness of the event which absolutely negates thoughtful care, but by the over-all nature of the circumstances. A woman driving a vehicle suddenly crippled by a flat tire on a rainy night will not be faulted for stopping at a point which is both convenient for her to do so and which is not a hazard to other motorists. She is not expected to run the entire boulevard in search for a parking zone or turn on a dark Street or alley where she would likely find no one to help her. It would be hazardous for her not to stop and assess the emergency (simply because the entire length of Aurora Boulevard is a no-parking zone) because the hobbling vehicle would be both a threat to her safety and to other motorists. In the instant case, Valenzuela, upon reaching that portion of Aurora Boulevard close to A. Lake St., noticed that she had a flat tire. To avoid putting herself and other motorists in danger, she did what was best under the situation. As narrated by respondent court:

"She stopped at a lighted place where there were people, to verify whether she had a flat tire and to solicit help if needed. Having been told by the people present that her rear right tire was flat and that she cannot reach her home she parked along the sidewalk, about 1½ feet away, behind a Toyota Corona Car."^[20] In fact, respondent court noted, Pfc. Felix Ramos, the investigator on the scene of the accident confirmed that Valenzuela's car was parked very close to the sidewalk.^[21] The sketch which he prepared after the incident showed Valenzuela's car partly straddling the sidewalk, clear and at a convenient distance from motorists passing the right lane of Aurora Boulevard. This fact was itself corroborated by the testimony of witness Rodriguez.^[22]

Under the circumstances described, Valenzuela did exercise the standard reasonably dictated by the emergency and could not be considered to have contributed to the unfortunate circumstances which eventually led to the amputation of one of her lower extremities. The emergency which led her to park her car on a sidewalk in Aurora Boulevard was not of her own making, and it was evident that she had taken all reasonable precautions.

Obviously in the case at bench, the only negligence ascribable was the negligence of Li on the night of the accident. "Negligence, as it is commonly understood is conduct which creates an undue risk of harm to others."^[23] It is the failure to observe that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.^[24] We stressed, in *Corliss vs. Manila Railroad Company*,^[25] that negligence is the want of care required by the circumstances.

The circumstances established by the evidence adduced in the court below plainly demonstrate that Li was grossly negligent in driving his Mitsubishi Lancer. It bears emphasis that he was driving at a fast speed at about 2:00 A.M. after a heavy downpour had settled into a drizzle rendering the street slippery. There is ample testimonial evidence on record to show that he was under the influence of liquor. Under these conditions, his chances of effectively dealing with changing conditions on the road were significantly lessened. As Prosser and Keaton emphasize:

[U]nder present day traffic conditions, any driver of an automobile must be prepared for the sudden appearance of obstacles and persons on the highway, and of other vehicles at intersections, such as one who sees a child on the curb may be required to anticipate its sudden dash into the street, and his failure to act properly when they appear may be found to amount to negligence. ^[26]

Li's obvious unpreparedness to cope with the situation confronting him on the night of the accident was clearly of his own making.

We now come to the question of the liability of Alexander Commercial, Inc. Li's employer. In denying liability on the part of Alexander Commercial, the respondent court held that:

There is no evidence, not even defendant Li's testimony, that the visit was in connection with official matters. His functions as assistant manager sometimes required him to perform work outside the office as he has to visit buyers and company clients, but he admitted that on the night of the accident he came from BF Homes Parañaque he did not have 'business from the company' (pp. 25-26, tsn, Sept. 23, 1991). The use of the company car was partly required by the nature of his work, but the privilege of using it for non-official business is a 'benefit,' apparently referring to the fringe benefits attaching to his position.

Under the civil law, an employer is liable for the negligence of his employees in the discharge of their respective duties, the basis of which liability is not respondeat superior, but the relationship of pater familias, which theory bases the liability of the master ultimately on his own negligence and not on that of his servant (Cuison v. Norton and Harrison Co., 55 Phil. 18). Before an employer may be held liable for the negligence of his employee, the act or omission which caused damage must have occurred while an employee was in the actual performance of his assigned tasks or duties (Francis High School vs. Court of Appeals, 194 SCRA 341). In defining an employer's liability for the acts done within the scope of the employee's assigned tasks, the Supreme Court has held that this includes any act done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage (Filamer Christian Institute vs. Intermediate Appellate Court, 212 SCRA 637). An employer is expected to impose upon its employees the necessary discipline called for in the performance of any act 'indispensable to the business and beneficial to their employer' (at p. 645).

In light of the foregoing, We are unable to sustain the trial court's finding that since defendant Li was authorized by the company to use the company car 'either officially or socially or even bring it home,' he can be considered as using the company car in the service of his employer or on the occasion of his functions. Driving the company car was not among his functions as assistant manager; using it for non-official purposes would appear to be a fringe benefit, one of the perks attached to his position. But to impose liability upon the employer under Article 2180 of the Civil Code, earlier quoted, there must be a showing that the damage was caused by their employees in the service of the employer or on the occasion of their functions. There is no evidence that Richard Li was at the time of the accident performing any act in furtherance of the company's business or its interests, or at least for its benefit. The imposition of solidary liability against defendant Alexander Commercial Corporation must therefore fail.[27]

We agree with the respondent court that the relationship in question is not based on the principle of respondeat superior, which holds the master liable for acts of the servant, but that of pater familias, in which the liability ultimately falls upon the employer, for his failure to exercise the diligence of a good father of the family in the selection and supervision of his employees. It is up to this point, however, that our agreement with the respondent court ends. Utilizing the bonus pater familias standard expressed in Article 2180 of the Civil Code,[28] we are of the opinion that Li's employer, Alexander Commercial, Inc. is jointly and solidarily liable for the damage caused by the accident of June 24, 1990.

First, the case of St. Francis High School vs. Court of Appeals[29] upon which respondent court has placed undue reliance, dealt with the subject of a school and its teacher's supervision of students during an extracurricular activity. These cases now fall under the provision on special parental authority found in Art. 218 of the Family Code which generally encompasses all authorized school activities, whether inside or outside school premises.

Second, the employer's primary liability under the concept of [pater familias] embodied by Art. 2180 (in relation

to Art. 2176) of the Civil Code is quasi-delictual or tortious in character. His liability is relieved on a showing that he exercised the diligence of a good father of the family in the selection and supervision of its employees. Once evidence is introduced showing that the employer exercised the required amount of care in selecting its employees, half of the employer's burden is overcome. The question of diligent supervision, however, depends on the circumstances of employment.

Ordinarily, evidence demonstrating that the employer has exercised diligent supervision of its employee during the performance of the latter's assigned tasks would be enough to relieve him of the liability imposed by Article 2180 in relation to Article 2176 of the Civil Code. The employer is not expected to exercise supervision over either the employee's private activities or during the performance of tasks either unsanctioned by the former or unrelated to the employee's tasks. The case at bench presents a situation of a different character, involving a practice utilized by large companies with either their employees of managerial rank or their representatives.

It is customary for large companies to provide certain classes of their employees with courtesy vehicles. These company cars are either wholly owned and maintained by the company itself or are subject to various plans through which employees eventually acquire their vehicles after a given period of service, or after paying a token amount. Many companies provide liberal "car plans" to enable their managerial or other employees of rank to purchase cars, which, given the cost of vehicles these days, they would not otherwise be able to purchase on their own.

Under the first example, the company actually owns and maintains the car up to the point of turnover of ownership to the employee; in the second example, the car is really owned and maintained by the employee himself. In furnishing vehicles to such employees, are companies totally absolved of responsibility when an accident involving a company-issued car occurs during private use after normal office hours?

Most pharmaceutical companies, for instance, which provide cars under the first plan, require rigorous tests of road worthiness from their agents prior to turning over the car (subject of company maintenance) to their representatives. In other words, like a good father of a family, they entrust the company vehicle only after they are satisfied that the employee to whom the car has been given full use of the said company car for company or private purposes will not be a threat or menace to himself, the company or to others. When a company gives full use and enjoyment of a company car to its employee, it in effect guarantees that it is, like every good father, satisfied that its employee will use the privilege reasonably and responsibly.

In the ordinary course of business, not all company employees are given the privilege of using a company-issued car. For large companies other than those cited in the example of the preceding paragraph, the privilege serves important business purposes either related to the image of success an entity intends to present to its clients and to the public in general, or for practical and utilitarian reasons - to enable its managerial and other employees of rank or its sales agents to reach clients conveniently. In most cases, providing a company car serves both purposes. Since important business transactions and decisions may occur at all hours in all sorts of situations and under all kinds of guises, the provision for the unlimited use of a company car therefore principally serves the business and goodwill of a company and only incidentally the private purposes of the individual who actually uses the car, the managerial employee or company sales agent. As such, in providing for a company car for business use and/or for the purpose of furthering the company's image, a company owes a responsibility to the public to see to it that the managerial or other employees to whom it entrusts virtually unlimited use of a company issued car are able to use the company issue capably and responsibly.

In the instant case, Li was an Assistant Manager of Alexander Commercial, Inc. In his testimony before the trial court, he admitted that his functions as Assistant Manager did not require him to scrupulously keep normal office

hours as he was required quite often to perform work outside the office, visiting prospective buyers and contacting and meeting with company clients.[30] These meetings, clearly, were not strictly confined to routine hours because, as a managerial employee tasked with the job of representing his company with its clients, meetings with clients were both social as well as work-related functions. The service car assigned to Li by Alexander Commercial, Inc. therefore enabled both Li - as well as the corporation - to put up the front of a highly successful entity, increasing the latter's goodwill before its clientele. It also facilitated meeting between Li and its clients by providing the former with a convenient mode of travel.

Moreover, Li's claim that he happened to be on the road on the night of the accident because he was coming from a social visit with an officemate in Parañaque was a bare allegation which was never corroborated in the court below. It was obviously self-serving. Assuming he really came from his officemate's place, the same could give rise to speculation that he and his officemate had just been from a work-related function, or they were together to discuss sales and other work related strategies.

In fine, Alexander Commercial, Inc. has not demonstrated, to our satisfaction, that it exercised the care and diligence of a good father of the family in entrusting its company car to Li. No allegations were made as to whether or not the company took the steps necessary to determine or ascertain the driving proficiency and history of Li, to whom it gave full and unlimited use of a company car.[31] Not having been able to overcome the burden of demonstrating that it should be absolved of liability for entrusting its company car to Li, said company, based on the principle of *bonus pater familias*, ought to be jointly and severally liable with the former for the injuries sustained by Ma. Lourdes Valenzuela during the accident.

Finally, we find no reason to overturn the amount of damages awarded by the respondent court, except as to the amount of moral damages. In the case of moral damages, while the said damages are not intended to enrich the plaintiff at the expense of a defendant, the award should nonetheless be commensurate to the suffering inflicted. In the instant case we are of the opinion that the reduction in moral damages from an amount of P 1,000,000.00 to P500,000.00 by the Court of Appeals was not justified considering the nature of the resulting damage and the predictable sequelae of the injury.

As a result of the accident, Ma. Lourdes Valenzuela underwent a traumatic amputation of her left lower extremity at the distal left thigh just above the knee. Because of this, Valenzuela will forever be deprived of the full ambulatory functions of her left extremity, even with the use of state of the art prosthetic technology. Well beyond the period of hospitalization (which was paid for by Li), she will be required to undergo adjustments in her prosthetic devise due to the shrinkage of the stump from the process of healing.

These adjustments entail costs, prosthetic replacements and months of physical and occupational rehabilitation and therapy. During her lifetime, the prosthetic devise will have to be replaced and re-adjusted to changes in the size of her lower limb effected by the biological changes of middle-age, menopause and aging. Assuming she reaches menopause, for example, the prosthetic will have to be adjusted to respond to the changes in bone resulting from a precipitate decrease in calcium levels observed in the bones of all post-menopausal women. In other words, the damage done to her would not only be permanent and lasting, it would also be permanently changing and adjusting to the physiologic changes which her body would normally undergo through the years. The replacements, changes, and adjustments will require corresponding adjustive physical and occupational therapy. All of these adjustments, it has been documented, are painful.

The foregoing discussion does not even scratch the surface of the nature of the resulting damage because it would be highly speculative to estimate the amount of psychological pain, damage and injury which goes with the sudden severing of a vital portion of the human body. A prosthetic device, however technologically advanced,

will only allow a reasonable amount of functional restoration of the motor functions of the lower limb. The sensory functions are forever lost. The resultant anxiety, sleeplessness, psychological injury, mental and physical pain are inestimable.

As the amount of moral damages are subject to this Court's discretion, we are of the opinion that the amount of P1,000,000.00 granted by the trial court is in greater accord with the extent and nature of the injury -. physical and psychological - suffered by Valenzuela as a result of Li's grossly negligent driving of his Mitsubishi Lancer in the early morning hours of the accident.

WHEREFORE, PREMISES CONSIDERED, the decision of the court of Appeals is modified with the effect of REINSTATING the judgment of the Regional Trial Court.

SO ORDERED.

Padilla, Bellosillo, and Hermosisima, Jr., JJ., concur.

Vitug., J., see concurring opinion.

[1] Rollo, p. 31.

[2] Id.

[3] Rollo, pp. 45-47.

[4] Rollo, pp. 5-22.

[5] De la Serna vs. Court of Appeals, 233 SCRA 325.

[6] Rollo, p. 37.

[7] Rollo, pp. 31-33.

[8] Rollo, p. 31.

[9] Rollo, pp. 33-34.

[10] The body releases catecholamines in response to "alerting" or threatening conditions (called "fight or flight" conditions by physiologists) rendering the individual, through his reflexes, senses and other alerting mechanisms responsive to these conditions. Alcohol, drugs, illness, exhaustion and drowsiness dull these normal bodily responses. BEST AND TAYLOR, PHYSIOLOGICAL BASIS OF MEDICAL PRACTICE, 81 (1993).

[11] Id.,

[12] There is no allegation on record that the blood alcohol levels of petitioner Li were taken by the police. As this was a lapse on the part of the investigators, not petitioner Valenzuela, Rodriguez's testimony as to the fact that Li was smelling of alcohol should have been given greater weight by the courts below.

[13] Rollo, pp. 33-34.

[14] KEETON AND DOBBS, ET. AL, PROSSER AND KEATON ON TORTS, 451, (1984) citing SECOND RESTATEMENT OF TORTS, Sec. 463.

[15] Elmore v. Des Moines City Railway Co., 224 N.W. 28 (1929).

[16] 165 SCRA 378 (1988) cf. Siegl vs. Watson, 195 NW 867.

[17] Id.

[18] 211 SCRA 517 (1992).

[19] *Id.*, at 540.

[20] Rollo, p. 37.

[21] Rollo, p. 31.

[22] *Id.*

[23] KEATON, *supra*, note 14.

[24] McKee, *supra*, note 17, at 539, citing 3 COOLEY ON TORTS, 265 (Fourth Ed.)

[25] 27 SCRA 674 (1969).

[26] KEATON *supra*, note 14, at 197, citing *Stanek v. Sweizerk*, 201 Neb., 357 (1981); *Lutz v. Shelby Mutual Insurance Co.*, 70 Wis 2d 743 (1975); *Potts v. Krey*, 362 S.W. 2d 726 (1975); *Ennis v. Dupree*, 128 SE. 2d 231 (1962).

[27] Rollo, pp. 36-37.

[28] The provision reads:

Art. 2180. 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.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprises in the service of the branches in which the latter are employed or on the occasion of their functions.

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

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task properly pertains, in which case what is provided by Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, as long as they remain in their custody.

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

[29] 194 SCRA 241 (1991).

[30] Rollo, p. 36.

[31] Rollo, p. 35.

VITUG, J., concurring:

Pursuant to Article 2180[1] of the Civil Code that acknowledges responsibility under a relationship of patria potestas, a person may be held accountable not only for his own direct culpable act or negligence but also for those of others albeit predicated on his own supposed failure to exercise due care in his supervisory authority and functions. In the case of an employer, that vicarious liability attaches only when the tortious conduct of the employee relates to, or is in the course of, his employment. The question to ask should be whether, at the time of the damage or injury, the employee is engaged in the affairs or concerns of the employer or, independently, in that of his own. While an employer incurs no liability when an employee's conduct, act or omission is beyond the range of employment,[2] a minor deviation from the assigned task of an employee, however, does not affect the liability of an employer.[3]

[1] "Art. 2180. 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.

"(1) The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

"(2) Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

"(3) The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

"(4) Employers shall be liable for the damage caused by their employees and household helps acting within the scope of their assigned task, even though the former are not engaged in any business or industry.

"(5) The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

"(6) Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

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

[2] See *Marquez vs. Castillo*, 68 Phil. 568.

[3] See *De Leon Brokerage Co., Inc. vs. Court of Appeals, et al.*, (4 SCRA 517); see also J.C.S. Sangco, *Philippine Law on Torts and Damages*, Vol. II, 1994 Revised ed., pp. 572-573.

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