

METRO MANILA TRANSIT CORPORATION (MMTC), PEDRO A. MUSA, CONRADO TOLENTINO, FELICIANA CELEBRADO AND THE GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONERS, VS. COURT OF APPEALS, ...*G.R. No. 116617. November 16, 1998*

Ponente: MENDOZA, J.

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These are appeals brought, on the one hand, by the Metro Manila Transit Corporation (MMTC) and Pedro Musa and, on the other, by the spouses Rodolfo V. Rosales and Lily R. Rosales from the decision,[1] dated August 5, 1994, of the Court of Appeals, which affirmed with modification the judgment of the Regional Trial Court of Quezon City holding MMTC and Musa liable to the spouses Rosales for actual, moral, and exemplary damages, attorney's fees, and the costs of suit for the death of the latter's daughter. MMTC and Musa in G.R. No. 116617 appeal insofar as they are held liable for damages, while the spouses Rosales in G.R. No. 126395 appeal insofar as the amounts awarded are concerned.

The facts are as follows:

MMTC is the operator of a fleet of passenger buses within the Metro Manila area. Musa was its driver assigned to MMTC Bus No. 27. The spouses Rosales were parents of Liza Rosalie, a third-year high school student at the University of the Philippines Integrated School.

At around a quarter past one in the afternoon of August 9, 1986, MMTC Bus No. 27, which was driven by Musa, hit Liza Rosalie who was then crossing Katipunan Avenue in Quezon City. An eye witness said the girl was already near the center of the street when the bus, then bound for the south, hit her.[2] She fell to the ground upon impact, rolled between the two front wheels of the bus, and was run over by the left rear tires thereof.[3] Her body was dragged several meters away from the point of impact. Liza Rosalie was taken to the Philippine Heart Center,[4] but efforts to revive her proved futile.

Pedro Musa was found guilty of reckless imprudence resulting in homicide and sentenced to imprisonment for a term of 2 years and 4 months, as minimum, to 6 years, as maximum, by the Regional Trial Court of Quezon City.[5] The trial court found:

All told, this Court, therefore, holds that the accused, who was then the driver of MMTC Bus No. 027, is criminally responsible for the death of the girl victim in violation of Article 365(2) of the Revised Penal Code. For, in the light of the evidence that the girl victim was already at the center of the Katipunan Road when she was bumped, and, therefore, already past the right lane when the MMTC Bus No. 027 was supposed to have passed; and, since the said bus was then running at a speed of about 25 kilometers per hour which is inappropriate since Katipunan road is a busy street, there is, consequently, sufficient proof to show that the accused was careless, reckless and imprudent in the operation of his MMTC Bus No. 027, which is made more evident by the circumstance that the accused did not blow his horn at the time of the accident, and he did not

even know that he had bumped the girl victim and had ran over her, demonstrating thereby that he did not exercise diligence and take the necessary precaution to avoid injury to persons in the operation of his vehicle, as, in fact, he ran over the girl victim who died as a result thereof.[6]

The spouses Rosales filed an independent civil action for damages against MMTC, Musa, MMTC Acting General Manager Conrado Tolentino, and the Government Service Insurance System (GSIS). They subsequently amended their complaint to include Feliciano Celebrado, a dispatcher of the MMTC, as a defendant therein. The counsel of MMTC and Musa attempted to introduce testimony that Musa was not negligent in driving Bus No. 27 but was told by the trial judge:

COURT:

That is it. You can now limit your question to the other defendant here but to re-try again the actual facts of the accident, this Court would not be in the position. It would be improper for this Court to make any findings with respect to the negligence of herein driver. You ask questions only regarding the civil aspect as to the other defendant but not as to the accused.[7]

The counsel submitted to the ruling of the court.[8]

In a decision rendered on March 6, 1990, the Regional Trial Court of Quezon City found MMTC and Musa guilty of negligence and ordered them to pay damages and attorney's fees, as follows:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering defendant Metro Manila Transit Corporation primarily and defendant Pedro Musa subsidiarily liable to plaintiffs-spouses Rodolfo V. Rosales and Lily R. Rosales as follows:

1. Actual damages in the amount of P150,000.00;
2. Moral damages in the amount of P500,000.00;
3. Exemplary damages in the amount of P100,000.00;
4. Attorney's fees in the amount of P50,000.00; and
5. Costs of suit.[9]

Both parties appealed to the Court of Appeals. On August 5, 1994, the Court of Appeals affirmed the decision of the trial court with the following modification:

WHEREFORE, except for the modification deleting the award of P150,000.00 as actual damages and awarding in lieu thereof the amount of P30,000.00 as death indemnity, the decision appealed from is, in all other aspects, hereby AFFIRMED.[10]

The spouses Rosales filed a motion for reconsideration, which the appellate court, in a resolution, dated September 12, 1996, partly granted by increasing the indemnity for the death of Liza Rosalie from P30,000.00 to P50,000.00. Hence, these appeals.

In G.R. No. 116617, MMTC and Musa assail the decision of the Court of Appeals on the following grounds:

PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION PARTICULARLY IN NOT HOLDING THAT PETITIONER-APPELLANT MMTC EXERCISED THE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS DRIVERS. THIS BEING THE CASE, APPELLANT MMTC IS ENTITLED TO BE ABSOLVED FROM ANY LIABILITY OR AT LEAST TO A REDUCTION OF THE RECOVERABLE DAMAGES.

THE PUBLIC RESPONDENT COURT OF APPEALS, JUST LIKE THE COURT A QUO, OVERLOOKED THE FACT THAT PETITIONER MMTC, A GOVERNMENT-OWNED CORPORATION, COMMITTED

NO FRAUD, MALICE, BAD FAITH, NOR WANTON, FRAUDULENT, OPPRESSIVE AND MALEVOLENT ACTUATIONS AGAINST HEREIN RESPONDENTS-APPELLEES.

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION TO HOLD PETITIONER-APPELLANT MMTC PRIMARILY LIABLE TO PRIVATE RESPONDENTS-APPELLEES IN THE AMOUNT OF P500,000 AS MORAL DAMAGES, P100,000 AS EXEMPLARY DAMAGES AND P30,000 BY WAY OF DEATH INDEMNITY.

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION IN RENDERING JUDGMENT FOR ATTORNEY'S FEES IN THE AMOUNT OF P50,000.00 IN FAVOR OF PRIVATE RESPONDENTS-APPELLEES.

On the other hand, in G.R. No. 126395, the spouses Rosales contend:

The Court of Appeals erred in:

First, considering that death indemnity which this Honorable Court set at P50,000.00 is akin to actual damages;

Second, not increasing the amount of damages awarded;

Third, refusing to hold all the defendants, now private respondents, solidarily liable.

MMTC and Musa do not specifically question the findings of the Court of Appeals and the Regional Trial Court of Quezon City that Liza Rosalie was hit by MMTC Bus No. 27. Nonetheless, their petition contains discussions which cast doubts on this point.[11] Not only can they not do this as the rule is that an appellant may not be heard on a question not specifically assigned as error, but the rule giving great weight, and even finality, to the factual conclusions of the Court of Appeals which affirm those of the trial court bars a reversal of the finding of liability against petitioners MMTC and Musa. Only where it is shown that such findings are whimsical, capricious, and arbitrary can they be overturned. To the contrary, the findings of both the Court of Appeals and the Regional Trial Court are solidly anchored on the evidence submitted by the parties. We, therefore, regard them as conclusive in resolving the petitions at bar.[12] Indeed, as already stated, petitioners' counsel submitted to the ruling of the court that the finding of the trial court in the criminal case was conclusive on them with regard to the questions of whether Liza Rosalie was hit by MMTC Bus No. 27 and whether its driver was negligent. Rather, the issue in this case turns on Art. 2180 of the Civil Code, which provides that "employers shall be liable for the 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." The responsibility of employers for the negligence of their employees in the performance of their duties is primary, that is, the injured party may recover from the employers directly, regardless of the solvency of their employees.[13] The rationale for the rule on vicarious liability has been adumbrated thus:

What has emerged as the modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the tort of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them, and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large. Added to this is the makeweight argument that an employer who is held strictly liable is under the greatest incentive to be careful in the selection, instruction and supervision of his servants, and to take every precaution to see that the enterprise is conducted safely.[14]

In *Campo v. Camarote*, [15] we explained the basis of the presumption of negligence in this wise:

The reason for the law is obvious. It is indeed difficult for any person injured by the carelessness of a driver to prove the negligence or lack of due diligence of the owner of the vehicle in the choice of the driver. Were we to require the injured party to prove the owner's lack of diligence, the right will in many cases prove illusory, as seldom does a person in the community, especially in the cities, have the opportunity to observe the conduct of all possible car owners therein. So the law imposes the burden of proof of innocence on the vehicle owner. If the driver is negligent and causes damage, the law presumes that the owner was negligent and imposes upon him the burden of proving the contrary.

Employers may be relieved of responsibility for the negligent acts of their employees within the scope of their assigned tasks only if they can show that "they observed all the diligence of a good father of a family to prevent damage." [16] For this purpose, they have the burden of proving that they have indeed exercised such diligence, both in the selection of the employee who committed the quasi-delict and in the supervision of the performance of his duties.

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. [17] On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. [18] To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence. [19]

In this case, MMTC sought to prove that it exercised the diligence of a good father of a family with respect to the selection of employees by presenting mainly testimonial evidence on its hiring procedure. According to MMTC, applicants are required to submit professional driving licenses, certifications of work experience, and clearances from the National Bureau of Investigation; to undergo tests of their driving skills, concentration, reflexes, and vision; and, to complete training programs on traffic rules, vehicle maintenance, and standard operating procedures during emergency cases. [20]

MMTC's evidence consists entirely of testimonial evidence (1) that transport supervisors are assigned to oversee field operations in designated areas; (2) that the maintenance department daily inspects the engines of the vehicles; and, (3) that for infractions of company rules there are corresponding penalties. [21] Although testimonies were offered that in the case of Pedro Musa all these precautions were followed, [22] the records of his interview, of the results of his examinations, and of his service were not presented.

MMTC submitted brochures and programs of seminars for prospective employees on vehicle maintenance, traffic regulations, and driving skills and claimed that applicants are given tests to determine driving skills, concentration, reflexes, and vision, [23] but there is no record that Musa attended such training programs and passed the said examinations before he was employed. No proof was presented that Musa did not have any record of traffic violations. Nor were records of daily inspections, allegedly conducted by supervisors, ever presented.

Normally, employers keep files concerning the qualifications, work experience, training, evaluation, and discipline of their employees. The failure of MMTC to present such documentary proof puts in doubt the credibility of its witnesses. What was said in *Central Taxicab Corporation v. Ex-Meralco Employees Transportation Corporation* [24] applies to this case:

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.

....

Albert also testified that he kept records of the preliminary and final tests given by 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.

It is noteworthy that, in another case involving MMTC, testimonial evidence of identical content, which MMTC presented to show that it exercised the diligence of a good father of a family in the selection and supervision of employees and thus avoid vicarious liability for the negligent acts of its employees, was held to be insufficient to overcome the presumption of negligence against it. In *Metro Manila Transit Corp. v. Court of Appeals*, [25] this Court said:

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. 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.

Having found both MMTC and its driver Pedro Musa liable for negligence for the death of Liza Rosalie on August 9, 1986, we now consider the question of damages which her parents, the spouses Rosales, are entitled to recover, which is the subject of the appeal in G.R. No. 126395.

Indemnity for Death. Art. 2206 provides for the payment of indemnity for death caused by a crime or quasi-delict. Initially fixed in said article of the Civil Code at P3,000.00, the amount of the indemnity has through the years been gradually increased based on the value of the peso. At present, it is fixed at P50,000.00.[26] To conform to this new ruling, the Court of Appeals correctly increased the indemnity it had originally ordered the spouses Rosales to be paid from P30,000.00 to P50,000.00 in its resolution, dated September 12, 1996.

Actual Damages. Art. 2199 provides that "except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." The spouses Rosales are claiming actual damages in the amount of P239,245.40. However, during the trial, they submitted receipts showing that expenses for the funeral, wake, and interment of Liza Rosalie amounted only to P60,226.65 itemized as follows: [27]

Medical Attendance P 739.65
Funeral Services 5,100.00
Wreaths 2,500.00
Embalment 1,000.00
Obituaries 7,125.00
Interment fees 2,350.00
Expenses during wake 14,935.00
Mourning clothes 5,000.00
Photography 3,500.00
Video Coverage 10,000.00

Printing of invitation cards 7,977.00

TOTAL 60,226.65

Hence, apart from the indemnity for death, the spouses Rosales are entitled to recover the above amount as actual damages.

Moral Damages. Under Art. 2206, the "spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased." The reason for the grant of moral damages has been explained thus:

. . . the award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender.[28]

In the instant case, the spouses Rosales presented evidence of the intense moral suffering they had gone through as a result of the loss of Liza Rosalie who was their youngest child. Rodolfo Rosales recounted the place of Liza Rosalie in the family and their relationship with her in the following words:

Q: Mr. Rosales, how was Liza to you as a daughter?

A: Well, Liza as a daughter was the greatest joy of the family; she was our pride, and everybody loved her - all her brothers and sisters - because she was sweet and unspoiled. . . . She was soft-spoken to all of us; and she still slept with us at night although she had her own room. Sometimes in the middle of the night she would open our door and ask if she could sleep with us. So we let her sleep with us, as she was the youngest.[29]

The death of Liza Rosalie left a void in their lives. Rodolfo Rosales testified on the devastating effect of the death of Liza Rosalie:

Q: And after she died, what changes, if any, did you feel in your family?

A: Well, there is something hollow in our family, something is missing. She used to greet me when I came home and smell if I was drunk and would tell me to dress up and take a shower before her mommy could see me. She would call me up at the office and say: "Daddy, come home, please help me with my homework." Now, all these things, I am missing, you know. . . . I do not feel like going home early. Sometimes my wife would complain and ask: "Where did you go?" But I cannot explain to her how I feel.[30]

Lily Rosales described life without Liza Rosalie thus:

Q: Now, your life without Liza, how would you describe it, Dr. Rosales?

A: You know it is very hard to describe. The family was broken apart. We could not go together because we remember Liza. Every time we go to the cemetery we try as much as possible not to go together. So, we go to the cemetery one at a time, sometimes, my husband and I, or my son and another one, but we never go together because we remember Liza. But before her death we would always be together, the whole family on weekends and on our days off. My husband works very hard, I also work very hard and my children go to school. They study very hard. Now we cannot go together on outings because of the absence of Liza.[31]

The spouses Rosales claim moral damages in the amount of P5,000,000.00. In *People v. Teehankee, Jr.*, [32] this Court awarded P1 million as moral damages to the heirs of a seventeen-year-old girl who was murdered. This amount seems reasonable to us as moral damages for the loss of a minor child, whether he or she was a victim of a crime or a quasi-delict. Hence, we hold that the MMTC and Musa are solidarily liable to the spouses Rosales in the amount of P1,000,000.00 as moral damages for the death of Liza Rosalie.

Exemplary Damages. Art. 2231 provides that exemplary damages may be recovered in cases involving quasi-delicts if "the defendant acted with gross negligence." This circumstance obtains in the instant case. The records indicate that at the time of the mishap, there was a pending criminal case against Musa for reckless imprudence resulting in slight physical injuries with another branch of the Regional Trial Court, Quezon City.[33] The evidence also shows that he failed to stop his vehicle at once even after eye witnesses shouted at him. The spouses Rosales claim exemplary damages in the amount of P5,000,000.00. Under the circumstances, we deem it reasonable to award the spouses Rosales exemplary damages in the amount of five hundred thousand pesos (P500,000.00).

Attorney's Fees. Pursuant to Art. 2208, attorney's fees may be recovered when, as in the instant case, exemplary damages are awarded. In the recent case of *Sulpicio Lines, Inc. v. Court of Appeals*,[34] which involved the death of a minor child in the sinking of a vessel, we held an award of P50,000.00 as attorney's fees to be reasonable. Hence, we affirm the award of attorney's fees made by the Court of Appeals to the spouses Rosales in that amount.

Compensation for Loss of Earning Capacity. Art. 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or quasi delict, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter;" Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money.[35] Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession.[36] In *People v. Teehankee*,[37] no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot.[38] But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof. In the United States it has been observed:

This raises the broader question of the proper measure of damages in death cases involving children, housewives, the old, and others who do not have market income so that there is no pecuniary loss to survivors or to the estate of the decedent. The traditional approach was to award no or merely nominal damages in such cases. . . . Increasingly, however, courts allow expert testimony to be used to project those lost earnings.[39]

Thus, in *Haumersen v. Ford Motor Co.*,[40] the court allowed the heirs of a seven-year-old boy who was killed in a car accident to recover compensation for loss of earning capacity:

Considerable evidence was presented by plaintiffs in an effort to give the jury a foundation on which to make an award. Briefly stated, this evidence showed Charles Haumersen was a seven-year-old of above average characteristics. He was described as "very intelligent" and "all-American." He received high marks in school. He was active in church affairs and participated in recreational and athletic events, often with children older than himself. In addition, he had an unusual talent for creating numerous cartoons and other drawings, some of which plaintiffs introduced at trial.

The record does not disclose passion and prejudice. The key question is whether the verdict of \$100,000 has support in the evidence.

Upon analysis of the record, we conclude that we should not disturb the award.

The argument for allowing compensation for loss of earning capacity of a minor is even stronger if he or she was a student, whether already training for a specific profession or still engaged in general studies. In *Krohmer v. Dahl*,[41] the court, in affirming the award by the jury of \$85,000.00 to the heirs of an eighteen-year-old college freshman who died of carbon monoxide poisoning, stated as follows:

There are numerous cases that have held admissible evidence of prospective earnings of a student or trainee. . . . The appellants contend that such evidence is not admissible unless the course under study relates to a given occupation or profession and it is shown that the student is reasonably certain to follow that occupation or profession. It is true that the majority of these decisions deal with students who are studying for a specific occupation or profession. However, not one of these cases indicate that evidence of one's education as a guide to future earnings is not admissible where the student is engaged in general studies or whose education does not relate to a specific occupation.

In sharp contrast with the situation obtaining in *People v. Teehankee*, where the prosecution merely presented evidence to show the fact of the victim's graduation from high school and the fact of his enrollment in a flying school, the spouses Rosales did not content themselves with simply establishing Liza Rosalie's enrollment at UP Integrated School. They presented evidence to show that Liza Rosalie was a good student, promising artist, and obedient child. She consistently performed well in her studies since grade school.[42] A survey taken in 1984 when Liza Rosalie was twelve years old showed that she had good study habits and attitudes.[43] Cleofe Chi, guidance counselor of the University of the Philippines Integrated School, described Liza Rosalie as personable, well-liked, and with a balanced personality.[44] Professor Alfredo Rebillon, a faculty member of the University of the Philippines College of Fine Arts, who organized workshops which Liza Rosalie attended in 1982 and 1983, testified that Liza Rosalie had the potential of eventually becoming an artist.[45] Professor Rebillon's testimony is more than sufficiently established by the 51 samples of Liza Rosalie's watercolor, charcoal, and pencil drawings submitted as exhibits by the spouses Rosales.[46] Neither MMTC nor Pedro Musa controverted this evidence.

Considering her good academic record, extra-curricular activities, and varied interests, it is reasonable to assume that Liza Rosalie would have enjoyed a successful professional career had it not been for her untimely death. Hence, it is proper that compensation for loss of earning capacity should be awarded to her heirs in accordance with the formula established in decided cases[47] for computing net earning capacity, to wit:

Gross Necessary

Net Earning Life x Annual - Living

Capacity = Expectancy Income Expenses

Life expectancy is equivalent to two thirds (2/3) multiplied by the difference of eighty (80) and the age of the deceased.[48] Since Liza Rosalie was 16 at the time of her death, her life expectancy was 44 more years.[49] Her projected gross annual income, computed based on the minimum wage for workers in the non-agricultural sector in effect at the time of her death,[50] then fixed at P37.00,[51] is P14,630.46.[52] Allowing for necessary living expenses of fifty percent (50%) of her projected gross annual income,[53] her total net earning capacity amounts to P321,870.12.[54]

Finally, the spouses Rosales argue that the Court of Appeals erred in absolving Conrado Tolentino, Feliciano Celebrado, and the GSIS of liability. The spouses Rosales alleged that Tolentino, as Acting General Manager of the MMTC, and Celebrado, as a dispatcher thereof, were charged with the supervision of Musa and should, therefore, be held vicariously liable under Art. 2180 of the Civil Code. With respect to the GSIS, they contend that it was the insurer in a contract for third party liability it had with the MMTC.

Although the fourth paragraph of Art. 2180 mentions "managers" among those made responsible for the negligent acts of others, it is settled that this term is used in the said provision in the sense of "employers." [55] Thus, Tolentino and Celebrado cannot be held liable for the tort of Pedro Musa.

In *Vda. de Maglana v. Consolacion*, [56] it was ruled that an insurer in an indemnity contract for third party

liability is directly liable to the injured party up to the extent specified in the agreement, but it cannot be held solidarily liable beyond that amount. The GSIS admitted in its answer that it was the insurer of the MMTC for third party liability with respect to MMTC Bus No. 27 to the extent of P50,000.00.[57] Hence, the spouses Rosales have the option either to claim the said amount from the GSIS and the balance of the award from MMTC and Musa or to enforce the entire judgment against the latter, subject to reimbursement from the former to the extent of the insurance coverage.[58]

One last word. The Regional Trial Court of Quezon City erred in holding MMTC primarily and Musa secondarily liable for damages arising from the death of Liza Rosalie. It was error for the appellate court to affirm this aspect of the trial court's decision.

As already stated, MMTC is primarily liable for damages for the negligence of its employee in view of Art. 2180. Pursuant to Art. 2181, it can recover from its employee what it may pay. This does not make the employee's liability subsidiary. It only means that if the judgment for damages is satisfied by the common carrier, the latter has a right to recover what it has paid from its employee who committed the fault or negligence which gave rise to the action based on quasi-delict.[59] Hence, the spouses Rosales have the option of enforcing the judgment against either MMTC or Musa.

From another point of view, Art. 2194 provides that "the responsibility of two or more persons who are liable for a quasi-delict is solidary." We ruled in *Gelisan v. Alday*[60] that "the registered owner/operator of a public service vehicle is jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries sustained in the operation of said vehicle." In *Baliwag Transit, Inc. v. Court of Appeals*[61] it was held that "to escape solidary liability for a quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care." Finally, we held in the recent case of *Philtranco Service Enterprises, Inc. v. Court of Appeals*[62] that "the liability of the registered owner of a public service vehicle . . . for damages arising from the tortious acts of the driver is primary, direct, and joint and several or solidary with the driver."

WHEREFORE, the decision of the Court of Appeals is SET ASIDE and another one is RENDERED holding the Metro Manila Transit Corporation and Pedro Musa jointly and severally liable for the death of Liza Rosalie R. Rosales and ORDERING them as such to pay to the spouses Rodolfo V. Rosales and Lily R. Rosales the following amounts:

- 1) death indemnity in the amount of fifty thousand pesos (P50,000.00);
- 2) actual damages in the amount of sixty thousand two hundred twenty six pesos and sixty five centavos (P60,226.65);
- 3) moral damages in the amount of one million pesos (P1,000,000.00);
- 4) exemplary damages in the amount of five hundred thousand pesos (P500,000.00);
- 5) attorney's fees in the amount of fifty thousand pesos (P50,000.00);
- 6) compensation for loss of earning capacity in the amount of three hundred twenty-one thousand eight hundred seventy pesos and twelve centavos (P321,870.12); and
- 7) the costs of suit.

SO ORDERED.

Melo (Acting Chairman) and Puno, JJ., concur.

Martinez, J., no part. On official leave.

[1] Per Justice Emeterio C. Cui and concurred in by Justices Fermin A. Martin, Jr. and Eugenio S. Labitoria.

[2] TSN, p. 3, March 31, 1987.

[3] Id., pp. 12-13

[4] Id., pp. 15-18.

[5] Exh. S-5, Records, pp. 37-42.

[6] Id., p. 42.

[7] TSN, pp. 20-21, May 27, 1988.

[8] Id., p. 21.

[9] Rollo, p. 58.

[10] Id., p. 53.

[11] Id., pp. 18-20.

[12] Cf., Heirs of the Late Teodoro Guaring, Jr. v. Court of Appeals, 269 SCRA 283 (1997).

[13] Philtranco Service Enterprises, Inc. v. Court of Appeals, 273 SCRA 562 (1997).

[14] WILLIAM L. PROSSER AND ROBERT E. KEETON, THE LAW OF TORTS 500-501 (5th ed., 1989).

[15] 100 Phil. 459, 463-64 (1956).

[16] Bahia v. Litonjua, 30 Phil. 624 (1915).

[17] Supra note 15, at 463.

[18] Metro Manila Transit Corporation v. Court of Appeals, 223 SCRA 521, 540-41 (1993).

[19] Central Taxicab Corporation v. Ex-Meralco Employees Transportation Corporation, 54 O.G. 7415, 7417-7418 (1958).

[20] TSN, pp. 1-31, Feb. 10, 1989.

[21] Id., pp. 34-36.

[22] Id., pp. 36-37.

[23] Exhs. 2-5, Records, pp. 268-272.

[24] Supra note 19.

[25] 223 SCRA 521, 534-535 (1993).

[26] E.g., *Philtranco Service Enterprises, Inc. v. Court of Appeals*, 273 SCRA 562, 573 (1997).

[27] Exhs. W to W-42, Records, pp. 168-210.

[28] CESAR SANGCO, *TORTS AND DAMAGES* 986 (Rev. ed., 1994).

[29] TSN, p. 19, May 28, 1987.

[30] *Id.*, pp. 19-20, May 28, 1987.

[31] TSN, pp. 17-18, June 11, 1987.

[32] 249 SCRA 54, 116 (1995).

[33] Exh. FF, Records, p. 265.

[34] 246 SCRA 376 (1995).

[35] *People v. Teehankee*, 249 SCRA 54, 118 (1995).

[36] E.g., *Cariaga v. Laguna Tayabas Bus Company*, 110 Phil. 346 (1960).

[37] 249 SCRA 54, 118-119 (1995).

[38] *Supra* note 35, at 119.

[39] RICHARD A. POSNER, *TORT LAW: CASES AND ECONOMIC ANALYSIS* 123-25 (1982)

[40] 257 N.W. 2d 7, 17 (1977).

[41] 402 P. 2d 979, 982 (1965).

[42] TSN, pp. 8-9, Aug. 27, 1987.

[43] Exh. DD, Records, p. 263.

[44] TSN, pp. 9-11, Aug. 27, 1987.

[45] TSN, pp. 1-7, June 22, 1987.

[46] Exhs. U-1 to U-51, Records, pp. 46-96.

[47] E.g., *Negros Navigation Co., Inc. v. Court of Appeals*, 281 SCRA 534 (1997).

[48] *Villa Rey Transit, Inc. v. Court of Appeals*, 31 SCRA 511 (1970).

[49] $\frac{2}{3} \times (80-14) = 44$.

[50] As adopted in *People v. Teehankee*, note 1, *supra*.

[51] Wage Order No. 6, effective November 1, 1984.

[52] 37.00 P1,125.42

x365____ x 13_____

P13,505.00 P14,630.46 gross annual income

÷ 12____

P 1,125.42 equivalent monthly rate

To account for the thirteenth month pay, the equivalent monthly rate is multiplied by thirteen.

[53] See note 47, *supra*.

[54] P14,630.46 P7,315.23

x .50 x 44

P7,315.23 net annual income P321,870.12 net earning capacity

[55] *Philippine Rabbit Bus Lines, Inc. v. Phil-American Forwarders, Inc.*, 63 SCRA 231 (1975).

[56] 212 SCRA 218, 272-274 (1992).

[57] *Records*, p. 32.

[58] *Supra* note 56.

[59] See *Philtranco Service Enterprises, Inc. v. Court of Appeals*, 273 SCRA 562 (1997).

[60] 154 SCRA 388, 394 (1987).

[61] 262 SCRA 230, 234 (1996) (*emphasis added*).

[62] *Supra* note 59 at 572.

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