

BALIWAG TRANSIT, INC., PETITIONER, VS. COURT OF APPEALS, DIVINA VDA. DE DIONISIO, FOR HERSELF AND IN BEHALF OF HER MINOR CHILDREN MARK ANGELO AND MA. LIZA, BOTH SURNAMED DIONISI...*G.R. No. 116624. September 20, 1996*

Ponente: BELLOSILLO, J.

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The wages earned by Mario Dionisio were the lifeblood of his family - his wife Divina and their children Mark Angelo and Ma. Liza, both minors. A work-related disruption unfortunately abruptly ended the means of livelihood of Mario prompting his dependent family to sue his employer and a co-employee for damages.

On 2 November 1990, at about 3:30 in the afternoon, petitioner's Baliwag Transit Bus No. 117 was driven by Juanito Fidel to its terminal on 2nd Avenue, Caloocan City, for repair of its brake system. Juanito Fidel told mechanic Mario Dionisio to inform the headman about the matter so that proper order to the mechanics could be made. Fidel then alighted from the bus and told the gasman to fill up the gas tank.

Shortly after, Juanito Fidel returned to the bus and sat on the driver's seat. Suddenly the bus moved; he felt something was hit. When he went down to investigate he saw Mario Dionisio lying on the ground bleeding and convulsive, sandwiched between Bus No. 117 and another bus parked thereat owned by the same petitioner. Fidel summoned his co-employees and they all helped to extricate Mario Dionisio. They rushed him to St. Luke's Hospital in Quezon City. On 6 November 1990 however he expired as evidenced by his Certificate of Death issued 22 November 1990.

Thereafter a complaint for damages was lodged by private respondents Divina Vda. de Dionisio, for herself and in behalf of her minor children Mark Angelo and Ma. Liza as heirs of the deceased, before the Regional Trial Court of Quezon City. On 3 February 1993 the trial court rendered a decision ordering petitioner Baliwag Transit, Inc., and its employee Juanito Fidel jointly and severally to pay the heirs of Mario Dionisio the following amounts: P50,000.00 as death indemnity, P6,691.00 as litigation expenses, P10,000.00 as attorney's fees, P3,000.00 as funeral expenses, and costs of suit.[1]

Private respondents appealed to the Court of Appeals which on 23 March 1994 rendered a decision modifying the appealed judgment and ordering petitioners instead to pay jointly and severally P50,000.00 as death indemnity, P1,429,050.00 for loss of earning capacity, P3,000.00 for funeral expenses, P 60,000.00 for moral damages, P30,000.00 for exemplary damages, P50,000.00 for attorney's fees, plus the costs of suit.[2] On 8 August 1994 the motion to reconsider the decision was denied.[3] Hence, this petition.

Petitioners maintain that respondent Court of Appeals erred in affirming the appealed judgment despite the contributory negligence of the deceased Mario Dionisio, i.e., in failing to take the necessary precaution while doing repair work on the brake system of Bus No. 117, and that the increase of the award of damages is

unreasonable being unsupported by law and the evidence.

The petition must fail. The circumstances clearly show that the proximate cause of the death of Mario Dionisio was the negligence of driver Juanito Fidel when he failed to take the necessary precaution to prevent the accident. He boarded his bus, sat on the driver's seat and was at the steering wheel when the bus moved pinning down the deceased who was repairing the defective brake system below. Driver Fidel should have known that his brake system was being repaired as he was in fact the one who told Dionisio to do the repair. Fidel should have parked the bus properly and safely. After alighting from the bus to tell the gasman to fill the tank, he should have placed a stopper or any hard object against a tire or two of the bus. But without taking the necessary precaution he boarded Bus No. 117 causing it to move and roll, pinning down the deceased which resulted in his serious injuries and eventual death. The reckless imprudence of Juanito Fidel makes him liable to the heirs of offended party for damages together with his employer. Article 2176 of the Civil Code provides -

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Complementing Art. 2176 is Art. 2180 which states -

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 x

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 x 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.

Article 2180, in relation to Art. 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption however may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to escape solidary liability for quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care.[4] Petitioner's failure to prove that it exercised the due diligence of a good father of a family in the selection and supervision of its driver Juanito Fidel will make it solidarily liable with the latter for damages caused by him.

As regards the reasonableness of the damages awarded, under Art. 1764, in conjunction with Art. 2206, of the Civil Code, as well as established jurisprudence, several factors are considered, namely: (a) life expectancy (considering the health of the deceased and the mortality table being deemed conclusive) and loss of earning capacity; (b) pecuniary loss, loss of support and service; and, (c) moral and mental sufferings. The loss of earning capacity is based mainly on two factors, namely, the number of years on the basis of which the damages shall be computed, and the rate at which the loss sustained by the heirs should be fixed.[5]

Finding discrepancies in the computation of respondent Court of Appeals, we here opine that the correct computation of the loss of earning capacity of the deceased, considering that he was the sole bread-winner of the family and only 29 years old when he met his untimely death, should be based on the formula: $\frac{2}{3} \times 51 (80 - 29 [\text{age at time of death}]) = \text{life expectancy}$. Thus -

P33,273.60 - gross annual income (P2,772.80 x 12 mos.)
Add: 4,244.64 - gross annual allowance (P353.72 x 12 mos.)
3,199.00 - 13th month pay
P40,717.24 - total annual income
Less: 6,000.00 - annual expenses (P500.00 x 12 mos.)
13,776.00 - annual pension (P1,148.00 x 12 mos.)
P20,941.24 - total annual net income
Multiply: 34 - life expectancy of Mario ($\frac{2}{3} \times 51$ [80 - 29 age at time of death])
P712,002.16 - total loss of earning capacity

Article 2206 grants the spouse, legitimate and illegitimate descendants and ascendants of the deceased moral damages for mental anguish by reason of death. Indisputably, the heirs of Mario suffered no small amount of mental anguish brought about by the manner he died and bearing in mind that he was the sole breadwinner of the family.

Article 2231 also awards exemplary damages if the defendant acted with gross negligence, as Juanito did, when he moved Bus No. 117 without first ascertaining if the repair of its break system was already undertaken. Exemplary damages having been awarded, recovery of attorney's fees follows under Art. 2208, par. (1), of the Civil Code.

WHEREFORE, the decision and resolution of respondent Court of Appeals subject of the instant petition are MODIFIED as follows: petitioner BALIWAG TRANSIT, INC., and JUANITO FIDEL are ordered to pay jointly and severally the heirs of Mario Dionisio (a) P50,000.00 for death indemnity, (b) P712,002.16 for loss of earning capacity, (c) P3,000.00 for funeral expenses, (d) P40,000.00 for moral damages, (e) P15,000.00 for exemplary damages (f) P20,000.00 for attorney's fees, and, (g) to pay the costs of suit.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge Celia Lipana-Reyes, RTC-Br. 81, Quezon City.

[2] Decision penned by Justice Corona Ibay-Somera, concurred in by Justices Nathanael P. de Pano Jr. and Asali S. Isnani, Fourth Division, Court of Appeals; Rollo, pp. 39-40.

[3] Rollo, p. 43.

[4] China Air Lines, Ltd. v. Court of Appeals, No. L- 45985 and Philippine Air Lines, Inc. v. Court of Appeals, No. L- 46036, 18 May 1990, 185 SCRA 449.

[5] Bachelor Express Incorporated v. Court of Appeals, G.R. No. 85691, 31 July 1990, 188 SCRA 216; Villa Rey Transit, Inc. v. Court of Appeals, No. L-25499, 18 February 1970, 31 SCRA 511.

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