

FIDEL C. CABARDO, PETITIONER, VS. THE COURT OF APPEALS AND JUANITO C. RODIL, RESPONDENTS.

G.R. No. 118202. May 19, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, reversing the decision of the Regional Trial Court and absolving private respondent from liability for damages to petitioner Fidel Cabardo.

The facts are as follows:

Jose Peralta was a driver of the Consolidated Industrial Gases Incorporated (CIGI). On October 26, 1987, while driving the company's truck-tanker bearing Plate No. NBG-925 on the southbound lane of the South Luzon Expressway, on his way back to the CIGI office in Santa Rosa, Laguna, he met an accident. Peralta claimed that when the truck-tanker reached Barangay San Francisco, Biñan, Laguna, a Volkswagen car suddenly took the inner lane occupied by his truck, as a result of which he was forced to swerve to the left. This caused the truck-tanker to veer and roll over the center island of the expressway until it fell on its right side, lying perpendicular to the expressway with its underside facing the north.[2] With him at the time of the accident was petitioner Fidel Cabardo who was his helper and pump operator.[3]

Moments later, private respondent Juanito Rodil came along in a Toyota Corolla car, bearing Plate No. DAU-124, also southbound, on the inner lane of the highway. There was a heavy rain which affected visibility along the highway. Rodil claimed that upon seeing the disabled vehicle on the center island, he immediately stepped on his brakes, causing his car to swerve to the left and slide sideways towards the truck-tanker, stopping only after it had crashed into the underside of the truck-tanker. With private respondent was his wife Leveminda.

Private respondent and his wife were injured.[4] The truck-tanker driver, Jose Peralta, was unhurt but his helper, petitioner Cabardo, suffered a fractured left leg. He and the Rodil spouses were taken to the hospital by passing motorists.[5]

A PNCC highway patrol team, with investigators from the Biñan Integrated National Police, arrived later at the scene of the accident. Only Peralta was there to give a statement.[6] The police investigators made a report, on the basis of which the accident was entered in the police blotter.[7]

On March 1, 1988 and March 22, 1988, petitioner Fidel Cabardo and the truck driver Jose Peralta gave their respective statements,[8] on the basis of which a criminal case for Reckless Imprudence resulting in Serious Physical Injuries was filed by the Biñan INP police against private respondent Juanito Rodil.[9]

On April 12, 1988, the Rodils filed a complaint for damages against CIGI and truck driver Jose Peralta. The case was filed in the Regional Trial Court at Santa Cruz, Laguna, where it was docketed as Civil Case No. SC-2559.[10]

On the other hand, petitioner Cabardo filed a complaint for damages against private respondent Juanito Rodil in the Regional Trial Court of Malolos, Bulacan on November 6, 1989, where the matter was docketed as Civil Case No. 639-M-89.[11] In his complaint, petitioner claimed that he and Peralta “were able to get out of the vehicle unhurt” after the “truck tanker fell on its right side in the middle portion of the center island of the [South Luzon] Expressway”;^[12] that, as he was about to put up the early warning device, however, private respondent, driving a Toyota Corolla in a “reckless and negligent manner. . . , bumped the truck-tanker and hit [him] on his left leg, causing him to be thrown off balance and lose consciousness” and that as a result, he “suffered a fractured left leg and other injuries.”^[13]

In his answer, private respondent denied having caused petitioner’s injury. He alleged that the same was sustained when the truck-tanker, driven by Jose Peralta, fell on its side.^[14] He contended that petitioner’s action was barred by Civil Case No. SC-2559, then pending in the RTC of Santa Cruz, Laguna, which he had filed against CIGI and Jose Peralta.^[15]

On November 21, 1989, the RTC of Santa Cruz, Laguna rendered judgment finding CIGI and Peralta guilty of negligence, even as it held private respondent Juanito Rodil guilty of contributory negligence.^[16] The dispositive portion of its decision reads:^[17]

WHEREFORE, and in view of all the foregoing consideration, judgment is hereby rendered for the plaintiffs and against the defendants, with the latter’s liability being mitigated by the contributory negligence of plaintiff driver, and orders the defendants, to pay plaintiffs, jointly and severally, as follows:

- The sum of P41,000.00 as actual damages, which was incurred for the hospitalization of both plaintiffs and the repairs of their car and;"

- The sum of P25,000.00 as moral damages, P10,000.00 as exemplary damages and the further sum of P15,000.00 for and as attorney’s fees and costs.

Meanwhile, private respondent Juanito Rodil filed in the Malolos court a Manifestation and Motion for Hearing on affirmative defense, alleging that Cabardo’s action was barred by the pendency of the suit filed by him and his wife in the Santa Cruz court.

On February 8, 1990, the Malolos court considered private respondent’s motion as a motion to dismiss and denied it on the ground that^[18]

In the defense of *litis pendencia*, it is necessary that there be another action pending involving the same parties, subject matter and cause of action (Santa Ana vs. Narvades, 30 SCRA, 454).

The plaintiff in the case at bar is not a party in the Santa Cruz, Laguna case. The cause of action in the instant case is the reckless imprudence of defendant Juanito C. Rodil which caused the injuries sustained by Fidel C. Cabardo while the cause of action in the Santa Cruz case is the simple negligence of driver Jose C. Peralta for failure to install an early warning device. The judgment rendered in the Santa Cruz case would not be res judicata in the instant case.

WHEREFORE, motion to dismiss (affirmative defenses pleaded) is hereby denied for lack of merit.

On January 3, 1991, after hearing on the merits, the trial court rendered judgment against private respondent Juanito Rodil. It found private respondent guilty of recklessness in driving his car which, it held, was the proximate cause of the injuries suffered by petitioner Fidel Cabardo.^[19] The dispositive portion of its decision reads:^[20]

WHEREFORE, premises considered, judgment is rendered against the defendant and in favor of the plaintiff, ordering the former to pay the latter, the following:

- 1) The sum of P8,215.17 for medical expenses;
- 2) The sum of P30,469.92 for loss of earning;
- 3) The sum of P20,000.00 as moral damages;
- 4) The sum of P10,000.00 as attorney's fees; and,
- 5) To pay the costs.

Private respondent Rodil filed a motion for reconsideration, but his motion was denied in an order of the court dated March 15, 1991.[21]

Private respondent then appealed to the Court of Appeals which rendered its now questioned decision reversing the RTC's decision on August 9, 1994. The Court of Appeals held that the testimonies of petitioner Cabardo and Peralta could not be believed because of inconsistencies.[22]

Petitioner Cabardo filed a motion for reconsideration but his motion was denied by the Court of Appeals in its resolution dated December 8, 1994.[23] Hence, this petition.

Petitioner contends that the Court of Appeals erred:[24]

I. IN DISMISSING THE COMPLAINT OF THE PETITIONER AGAINST PRIVATE RESPONDENT.

II. IN STATING THAT THERE WERE APPARENT INCONSISTENCIES IN THE STATEMENT OF PETITIONER AND PERALTA.

III. IN STATING THAT NEITHER THE PETITIONER NOR PERALTA WAS CATEGORICAL IN THEIR TESTIMONIES REGARDING THE INCIDENT.

IV. IN STATING THAT PETITIONER SUFFERED INJURIES WHEN THE TRUCK-TANKER SWERVED TO THE CENTER ISLAND OF THE EXPRESSWAY.

Private respondents, on the other hand, argue[25] that—

I. The petition suffers from numerous procedural deficiencies for the following reasons:

- The motion for extension of time to file petition for review on certiorari was filed in the name and in behalf of Consolidated Industrial Gases Inc. (CIGI).

- The petition has not fully complied with the requirements of Revised Circular No. 28-91 of this Court issued on February 8, 1994.

- The petition does not state the assignment of errors made in private respondent's brief as filed in the Court of Appeals as required under Section 2, Rule 45.

II. The petition raises only questions of fact not cognizable by this Court through a petition for review on certiorari under Rule 45 and neither does this case constitute an exception.

We find the petition to be meritorious. To begin with, both the Santa Cruz court and the court below found private respondent Juanito Rodil guilty of negligence in running his Toyota Corolla at a high speed in driving rain with

the result that he did not see the disabled truck-tanker until it was late and thus failed to stop his car on time. The Santa Cruz court found:

. . . . Letter of Instructions No. 229, which requires the installation of an early warning devi[c]e in front [sic] and rear of a stalled vehicle, is precisely intended to prevent fatal or serious accidents. Here, there was that omission. While the defendant driver, attempted to show, that he gave instructions to his helper to install the early warning devi[c]e, there is absolutely no corroboration on this alleged fact. As a matter of fact, not one of the several defense witnesses testified as to the existence of that early warning device. If it existed, than it would have been presented as a piece of evidence. Consequently, it is here clear, that the defendant driver, was negligent when he failed to cause the installation of the early warning device, the same of which could have warned the plaintiffs of the stalled truck tanker on the middle of expressway island, which ordinarily should not be staying there. In fact, there is even now a doubt as to whether or not said truck had any early warning device.

. . . Be all that as it may, however, the plaintiff driver [herein private respondent Juanito Rodil], in this case, does not appear without a fault. He testified that it was raining heavily and that while driving for home, he noticed the truck tanker from about 5 to 10 meters, more or less, from his car. When he applied his brakes, his car skidded to the left and slipped to the right and smashed into the truck tanker. From the way his car reacted to his application of its brakes, the plaintiff driver [Rodil], was driving at a fast pace, because it skidded for a very long space, that of about 5 to 10 meters, and the impact it caused on the truck tanker, was strong. Clearly, therefore, the plaintiff driver, was driving fast, while it was raining heavily.[26]

If the court allowed recovery to private respondent, it was only because the defendants in that case (CIGI and Peralta) were negligent in failing to install an EWD.

On the other hand, the Malolos court likewise found private respondent negligent:[27]

The defendant was reckless in driving his car. This conclusion is based on defendant's own admission, he was travelling on the left lane of the expressway at the rate of 60 to 70 kilometers per hour despite the heavy rain and he could hardly see an object at the distance of ten (10) meters. The heavy rain fell between San Pedro and Biñan, Laguna, according to the defendant which is a few kilometers away from the scene of the accident. A careful and prudent driver would slow down, put his head lights on and transfer to the lane for slow moving vehicles. This precaution the defendant failed to take. Instead he recklessly and imprudently continued to drive on the left lane without regard to the surrounding circumstances at that time.

Not a portion of the truck-tanker was protruding the asphalted portion of the expressway, according to the police investigator. The police investigator testified that when he arrived at the scene of the accident he saw the truck-tanker and the car in contact inside the center island.

The defendant is liable for the injury sustained by the plaintiff even assuming that a portion of the truck-tanker was protruding the pavement of the expressway. The accident could have been prevented had defendant exercised reasonable care in driving his car. He was driving unreasonably fast even if he could hardly see an object at a distance of ten meters. The truck-tanker was already stationary inside the center island of the expressway. Had defendant exercised reasonable care and prudence the accident would have been avoided and the plaintiff would not have been injured as a consequence. The law provides that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. x x x (Art. 2176, Civil Code).

Indeed, there is no question that private respondent drove his car negligently. The question in this case is whether petitioner's injuries were caused by private respondent's car or whether he was injured as a result of the fact that the truck-tanker in which he was riding turned turtle and fell on its side.

After reviewing the evidence in this case, we are inclined to agree with the trial court's finding that petitioner's

injuries were caused by private respondent's car. The Court of Appeals reversed the trial court's decision on the ground that petitioner, as plaintiff below, failed to prove that he sustained injuries as a result of having been hit by private respondent's car and not as a result of the truck-tanker having veered and rolled over its side. The appellate court's decision is based mainly on alleged inconsistencies in the testimonies of petitioner and his witness Jose Peralta. The Court of Appeals stated:[28]

On direct examination, appellee testified that after the truck landed on its side, Peralta and he (Cabardo) got out of the truck. He found that the truck did not sustain any damage. He was then told by Peralta to put up the early warning device (EWD) behind the truck. He was then hit on the left leg by the rear tire of the car after which he lost consciousness. (TSN, May 7, 1990, pp. 8-9).

On cross-examination, appellee stated that after coming out of the truck he was asked by Peralta who stood nearby to inspect the truck. In the course of his inspection of the truck, he depressurized its valve and it was while he was looking for the pressure gauge when the car bumped him. (Ibid., pp. 23-24).

When confronted with a portion of his answer to question No. 7 in his statement. Exhibit A, which reads, thus:

"x x x Tumaob ang sasakyan namin sa mismong sakop ng center island ng expressway. Ako naman ay matiwasay na nakalabas mula sa loob ng tumaob naming sasakyan at hindi ako nagkaroon ng anumang pinsala sa katawan. Kinuha ko ang early warning device na dala-dala ng trak para ilagay sa bandang likuran ng aming tumaob na trak sa pinanggalingan ng mga sasakyan. Hindi pa ako gaanong nakakalayo sa aming trak ay bigla na lamang na may kotseng bumundol sa aking kaliwang paa ako ay tumilapon at nawalan ng ulirat. x x x."

and asked which version was correct: his statement on cross-examination that after getting out of the truck, he looked around the truck and at the gauge at which time he was hit by the car, or his written statement that after coming out of the truck, he got the EWD and he was on his way to putting it up when he was hit by the car, appellee initially answered that he was confused (Ibid., p. 25), then later explained that at the time, he was also carrying the EWD but he did not follow Peralta's instructions to set it up (Ibid., p. 27). Farther down his testimony on cross-examination, appellee changed his statement again by saying that at the time when he was looking at the gauge and he was hit by the car, he was not holding anything, not even the EWD, because he did not follow Peralta's instructions right away (TSN, May 14, 1990, p. 4).

Peralta, on the other hand, testified that after he and appellee got out of the truck, it was he (Peralta), who checked the pressure on the gauge and that he also instructed appellee to put up the EWD, but he was not sure if appellee followed his instruction, although appellee was able to get the EWD (TSN, May 21, 1990, pp. 4, 16). Concerning the exact moment when appellee was hit by the car, Peralta's testimony is far from being clear-cut and straightforward. In one breath, he stated that he saw appellee hit by the car (*supra*). In another, he said he did not see appellee bumped by the car but that he saw appellant fall down (ibid., pp. 18, 19 and 20).

Peralta's answer to question No. 5 in his written statement, Exhibit C, taken by the police reads, thus:

"x x x Kapwa kami hindi nasugatan ng aking kasamang si Fidel Cabardo at kami ay lumabas mula sa trak at inutusan ko si Fidel na kunin iyong aming dala-dalang early warning device para ilagay sa lugar na di-kalayuan sa aming sasakyan na pinagmulan ng mga sasakyang dumadaan. Ng bitbit na ni Fidel iyong early warning device ay nakita ko na lamang (sic) na mayroong isang kotse na nag-slide doon sa tinatakbuhan niyang lane ng expressway at tinumbok nitong kotse si Fidel. Nabunggo si Fidel nung kotse at si Fidel ay tumilapon at tinamaan din ng kotse iyong aming bumaligtad na trak. x x x."

In view of the apparent inconsistencies in the statements of appellee and Peralta which cannot be considered as insignificant, their version of the incident can not inspire credence and should not have been given much weight by the court *a quo*. Where the narration's concern essential facts and the very event sought to be established, such

inconsistencies cannot inspire belief in the integrity of the witnesses' testimonies.

There are indeed inconsistencies but these are minor and inconsequential. What is important is that the statements dovetail in essential details with the testimonies given in court: Petitioner claimed that he was unhurt after their vehicle turned turtle and fell on its side; that he and Jose Peralta, who was driving the vehicle, got out of the truck-tanker; that he was asked by Peralta to put up the EWD; and that petitioner was hurt because he was hit by private respondent's car. Petitioner said in court that he was hit while checking the pressure gauge. It is possible that this happened before he could put up the EWD.

The statement (Exh. A) that he was hit while in the act of putting the EWD could be a mistake of the police investigator who took down petitioner's statement. We have noted in a number of cases inaccuracies and their causes, but as long as the inaccuracies concern only minor matters, we have not allowed the resulting inconsistencies to affect our judgment of the credibility of witnesses. Indeed, as we have also said, "a witness is not expected to remember an occurrence with perfect recollection down to insignificant and minute details." [29] Nor is the contradiction between petitioner's statement (Exh. A) that he was holding the EWD when hit by the car and Peralta's testimony in court that he (Peralta) was not sure whether petitioner followed his (Peralta's) instruction to put the EWD fatal to his credibility. What is important is that Peralta said he had instructed petitioner to put the EWD and that petitioner was hurt because he was hit by private respondent's speeding car.

It is noteworthy that at the scene of the accident, Peralta told police investigators of the Biñan Police Station that petitioner had been hit by a car which crashed against their truck-tanker. That was shortly after the accident and before he had time to invent a story. His statement to the police is reflected in the entry made in the police blotter on the day of the accident, which reads:[30]

ENTRY NR. : 8084

DATED : 26 October 1987

TIME : 2:30 P.M.

CASE : “Reckless Imprudence Resulting to Damage to Property” (Self Accident)

On this date and time indicated above Pfc. Jenario Zavalla and Pat Antonio Enriquez of this station reported a vehicular accident that occurred on or about 12:20 P.M., this dated at the Luzon South Expressway, Brgy. San Francisco, this locality wherein a Cargo Truck with Plate No. NBG-925 T Pil '86 owned by CONSOLIDATED INDUSTRIAL GASES INCORPORATED with office address at Brgy. Macabling, Santa Rosa, Laguna and driven by one: JOSE PERALTA y CARUNGAN, 37 yrs old, resident of same address, holder of Prof-DLR-8972935 was accidentally swerved to the left to avoid hitting the volkswagen running ahead while travelling towards South direction, simultaneously lost control of its wheel and turned side-down which plunged at the center island of the highway.

X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X

ENTRY NR. : 8085

DATE : 26 October 1987

TIME : 2:35 P.M.

CASE : “Reckless Imprudence Resulting to Multiple Physical Injuries and Damage to Property”

ICOW re-Entry No. 8084, after a couple minutes later a coming Toyota Corolla with Plate No. DAU-124 owned and driven by one: JUANITO RODIL y CASAS, 57 yrs old, married, Prov'l Engineer, and residing at Villa Silangan Subd., Santa Cruz, Laguna, - holder of a NPDL-D12-66-005198 with DLR-8815262 coming from North to South direction swerved also to the left upon seeing the sidedown truck and applied the brakes, causing lost control of its wheel, thereby hitting the said truck (CIGI) with Plate No. NBG-925 and the person standing thereat identified as one: FIDEL CABARDO y CABREGA, 52 yrs old, married, helper of the truck, a

resident at Brgy. Macabling, Santa Rosa, Laguna.

The accident resulted to the injuries of the victim, the driver of the car and its occupant/wife as one: LEVY MINDA TAJONERA-RODIL, 47 yrs old, married, housewife are treated at Perpetual Help Hospital, this locality and damages to the said car.

N O T E : Recorded by: P/SGT ARMANDO SALVADOR, SR. - Duty Desk Officer

(Emphasis added)

Indeed, it is more probable that petitioner's injuries were caused by private respondent's car hitting him. First, as the Court of Appeals itself found, petitioner was taken to a hospital in Biñan, Laguna together with the Rodils. Had he been injured earlier when the truck-tanker turned turtle, he would, in all probability, have been taken for treatment much earlier.

Second, as the trial court observed:[31]

The plaintiff, as passenger of the truck-tanker was seated at the right side of the driver. The driver did not sustain any injury. On the other hand, the plaintiff sustained and was treated of the following injuries.

Fracture, closed, complete,
lateral tibial condyle, knee.

If the plaintiff sustained his injuries when the truck-tanker he was riding turned turtle and landed on its right side in the center island of the expressway, it would not have been on his left knee but in some parts of the body, more especially on the right side that must have come in contact with the door. This is the law of gravity, and testimony to the contrary should not be given credence. The plaintiff was categorical in his testimony that after the car fell on its right side the driver and he came out of the truck and he was already looking at the guage [sic] carrying the EWD when the car hit him. The defendant, in contrast, did not state categorically that his car did not hit the plaintiff. What defendant testified was that he did not see a person hit by the car. Moreover, defendant admitted that immediately before the accident he was driving on the left lane at the rate of 60 to 70 kilometers per hour and he could hardly see an object at a distance of ten (10) meters because of the heavy rain.

Private respondent argues that the petition in this case should be dismissed on procedural grounds. It is not true that the petition does not contain an assignment of errors. There is an assignment of errors,[32] and it is quoted in this opinion.

It is further contended that the motion for extension to file petition was made on behalf of the Consolidated Industrial Gases Inc. This is obviously a mere typographical error made in the title of the motion. A reading of the allegations of the motion for extension shows plainly that it was actually filed on behalf of petitioner Cabardo.[33] Anyway, the defect should have been pointed out earlier, instead of only now.

Lastly, petitioner's failure to state in the certificate of non-forum shopping that he undertakes to inform the Court of any petition which might be filed, as required under Revised Circular No. 28-91, may be overlooked since it does not appear that any petition related to this case has ever been filed in any other court. On the other hand, to dismiss the petition on this ground would be to uphold technicality over substantial justice.

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED and that of the Regional Trial Court is REINSTATED.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Per Justice Cezar D. Francisco and concurred in by Presiding Justice Nathanael P. De Pano, Jr. and Justice Buenaventura J. Guerrero.

[2] Rollo, p. 22.

[3] Ibid.

[4] Ibid.

[5] Rollo, p. 23.

[6] Ibid.

[7] See Exh. B.

[8] Exhs. A and C.

[9] Rollo, p. 24.

[10] Ibid.

[11] Records, pp. 1-4.

[12] Id., p. 2.

[13] Ibid.

[14] Records, pp. 10-12.

[15] Id., pp. 13-17.

[16] Id., pp. 37-47.

[17] Id., p. 47.

[18] Id., p. 58.

[19] Id., pp. 199-210.

[20] Id., p. 210.

[21] Id., p. 265.

[22] CA Rollo, pp. 48-65.

[23] Rollo, p. 40.

[24] Id., p. 11.

[25] Id., pp. 66-72.

[26] Exh. 12-I, Records, p. 153.

[27] Id., p. 209.

[28] Rollo, pp. 31-33.

[29] Severino Antonio v. Court of Appeals, G.R. No. 100513, June 13, 1997, citing *People v. Daen*, 244 SCRA 382 (1995).

[30] Exh. B, supra note 7.

[31] Records, p. 208.

[32] Rollo, p. 11.

[33] Id., p. 2.

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