

SANITARY STEAM LAUNDRY, INC., PETITIONER, VS. THE COURT OF APPEALS, NICANOR BERNABE III, JOSEFINA BERNABE, IN THEIR INDIVIDUAL CAPACITIES AND AS HEIRS OF JASON BERNABE, JOHN JOS...*G.R. No. 119092. December 10, 1998*

Ponente: MENDOZA, J.

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This case involves a collision between a Mercedes Benz panel truck of petitioner Sanitary Steam Laundry and a Cimarron which caused the death of three persons and the injuries of several others. The accident took place at the Aguinaldo Highway in Imus, Cavite on August 31, 1980. All the victims were riding in the Cimarron. One of those who died was the driver. The Regional Trial Court of Makati found petitioner's driver to be responsible for the vehicular accident and accordingly held petitioner liable to private respondents for P472,262.30 in damages and attorney's fees. Its decision was affirmed in toto by the Court of Appeals. It is here for a review of the appellate court's decision.

The passengers of the Cimarron were mostly employees of the Project Management Consultants, Inc. (PMCI). They had just visited the construction site of a company project at Lian, Batangas. The other passengers were family members and friends whom they invited to an excursion to the beach after the visit to the construction site. The group stayed at Lian beach until 5:30 p.m., when they decided to go back to Manila.

The Cimarron, with Plate No. 840-4J, was owned by Salvador Salenga, father of one of the employees of PMCI. Driving the vehicle was Rolando Hernandez. It appears that at about 8:00 p.m., as it was traveling along Aguinaldo Highway in Imus, Cavite on its way back to Manila, the Cimarron was hit on its front portion by petitioner's panel truck, bearing Plate No. 581 XM, which was traveling in the opposite direction. The panel truck was on its way to petitioner's plant in Dasmariñas, Cavite after delivering some linen to the Makati Medical Center. The driver, Herman Hernandez, claimed that a jeepney in front of him suddenly stopped. He said he stepped on the brakes to avoid hitting the jeepney and that this caused his vehicle to swerve to the left and encroach on a portion of the opposite lane. As a result, his panel truck collided with the Cimarron on the north-bound lane.

The driver of the Cimarron, Rolando Hernandez, and two of his passengers, namely, Jason Bernabe and Dalmacio Salunoy, died. Several of the other passengers of the Cimarron were injured and taken to various hospitals.

On December 4, 1980, private respondents filed this civil case for damages before the then Court of First Instance of Rizal, Pasig Branch, against petitioner.

On November 23, 1990, the Regional Trial Court of Makati, to which the case was transferred following the reorganization of the judiciary, rendered judgment for private respondents. The dispositive portion of its decision reads:

It is for the reasons stated above that the court is persuaded to award the damages incurred by the plaintiffs as proved in the trial as follows:

Actual or compensatory expenses:

- a. Charito Estolano P35,813.87 (Exh. J)
- b. Nicanor Bernabe III 20,024.94
& Josefina C. Bernabe
- c. Julieta, Ailyn & 45,830.45 (Exh. QQ)
Josefina Enriquez and Josefina Valeiro
- d. Leonor Macaspac 2,740.00
- e. Victor Rey Ignacio 14,820.64 (Exh. EEE)
- f. Rene Tablante 10,032.40 (Exh. QQQ)
- g. Nenita Salonoy, widow; 20,000.00

and Manilyn, children Moral damages should also be awarded as follows:

For the injuries sustained by:

- a. Charito Estolano P10,000.00 (Exh. F)
- b. Julieta P. Enriquez 15,000.00 (Exh. MM)
- c. Ailyn C. Enriquez 8,000.00 (Exh. NN)
- d. Josefina R. Enriquez 10,000.00 (Exh. OO)
- e. Josefina P. Valerio 2,000.00 (Exh. PP)
- f. Nenita Salonoy 20,000.00 (Exh. DD)
- g. Nicanor Bernabe III 8,000.00 (Exh. Q)
- h. Josephine Bernabe 2,000.00 (Exh. R)
- i. John Joseph Bernabe 10,000.00
- j. Manilyn G. Salonoy 10,000.00 (Exh. EE)
- k. Jack Salonoy 10,000.00 (Exh. JJ)
- l. Leonor C. Macaspac 2,000.00 (Exh. AAA)
- m. Victor Ignacio 8,000.00 (Exh. DDD)
- n. Rene Tablanta 8,000.00 (Exh. FFF)

and finally the heirs of Jason Bernabe should be awarded the sum of P50,000.00 for the latter's death. The heirs of Dalmacio Salonoy should be given the sum of P100,000.00 for moral damages and unearned income.

The foregoing considered, judgment is rendered in favor of plaintiffs ordering defendant to pay the amounts aforecited and to pay the further sum of P50,000.00 for attorney's fees and the costs.

SO ORDERED.

As already stated, the Court of Appeals, to which the decision of the trial court was appealed, affirmed the decision on January 26, 1995. Hence, this appeal.

First. Petitioner contends that the driver of the Cimarron was guilty of contributory negligence and, therefore, its liability should be mitigated, if not totally extinguished. It claims that the driver of the Cimarron was guilty of violation of traffic rules and regulations at the time of the mishap. Hence, in accordance with Art. 2185 of the Civil Code, he was presumed to be negligent.

According to petitioner, the negligence consisted of the following:

1. The Cimarron was overloaded because there were from 20 to 25 passengers inside when the passenger capacity of the vehicle was only 17.

2. The front seat of the Cimarron was occupied by four adults, including the driver.
3. The Cimarron had only one headlight on (its right headlight) as its left headlight was not functioning.

Petitioner cites Art. III, §2 of R.A. No. 4136, known as the Land Transportation and Traffic Code, which provides that "No person operating any vehicle shall allow more passengers or more freight or cargo in his vehicle than its registered carry capacity" and Art. IV, §3(e) which states that "Every motor vehicle of more than one meter of projected width, while in use on any public highway shall bear two headlights... which not later than one-half hour after sunset and until at least one-half hour before sunrise and whenever weather conditions so require, shall both be lighted."

Petitioner asserts that the fact that its panel truck encroached on a portion of the lane of the Cimarron does not show that its driver was negligent. Petitioner cites the case of *Bayasen v. Court of Appeals*,^[1] which allegedly held that the sudden swerving of a vehicle caused by its driver stepping on the brakes is not negligence per se. Petitioner further claims that even if petitioner's swerving to the lane of respondents were considered proof of negligence, this fact would not negate the presumption of negligence on the part of the other driver arising from his violations of traffic rules and regulations.

Petitioner likewise invokes the ruling in *Mckee v. Intermediate Appellate Court*,^[2] in which a driver who invaded the opposite lane and caused a collision between his car and a truck coming from the opposite lane, was exonerated based on the doctrine of last clear chance, which states that a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent, is solely responsible for the consequences of the accident.

Petitioner contends that the ruling in that case should be applied to the present case. According to petitioner, although the driver of the panel truck was initially negligent, the driver of the Cimarron had the last opportunity to avoid the accident. However, because of his negligence (i.e., the aforementioned violations of traffic rules and regulations such as the use of only one headlight at night and the overcrowding at the front seat of the vehicle), he was not able to avoid a collision with the panel truck.

We find the foregoing contention to be without merit.

First of all, it has not been shown how the alleged negligence of the Cimarron driver contributed to the collision between the vehicles. Indeed, petitioner has the burden of showing a causal connection between the injury received and the violation of the Land Transportation and Traffic Code. He must show that the violation of the statute was the proximate or legal cause of the injury or that it substantially contributed thereto. Negligence, consisting in whole or in part, of violation of law, like any other negligence, is without legal consequence unless it is a contributing cause of the injury.^[3] Petitioner says that "driving an overloaded vehicle with only one functioning headlight during nighttime certainly increases the risk of accident,"^[4] that because the Cimarron had only one headlight, there was "decreased visibility," and that the fact that the vehicle was overloaded and its front seat overcrowded "decreased [its] maneuverability."^[5] However, mere allegations such as these are not sufficient to discharge its burden of proving clearly that such alleged negligence was the contributing cause of the injury.

Furthermore, based on the evidence in this case, there was no way either driver could have avoided the collision. The panel truck driver testified:^[6]

Q.

You stated you were following a jeepney along the highway in Imus, Cavite, what happened afterwards, if any?

A.

The passenger jeepney I was following made a sudden stop so I stepped on the brakes.

Q.

Upon stepping on your brakes, what happened if any?

A.

The Mercedes Benz (panel) suddenly swerved to the left, sir.

Q.

How big was the swerving to the left?

A.

The distance which my vehicle swerved beyond the middle line or center line to the left was about this distance, sir (witness demonstrating by using both hands the distance).

ATTY. ALILING:

Can we stipulate that it is 1 foot, Your Honor.

ATTY. GONZALES:

A little more, 1 1/2 feet.

ATTY. ALILING:

1 1/4 feet.

ATTY. GONZALES:

Between 1 1/4 and 1 1/2 feet.

The panel truck driver's testimony is consistent with the testimonies of private respondents that the panel truck went out of control and simply smashed into the Cimarron in which they were riding. Thus, Nicanor Bernabe III testified:[7]

Q:

And did you see how the accident happened?

A:

I just saw a glare of light. That is all and then the impact.

Q:

Where did you see that glare of light?

A:

Coming in front ahead of us.

Q:

When you say ahead of you, was it . . . ?

A:

Towards us.

....

Q:

And from what did those glare of light come from?

A:

Based on information I received, the light came from the headlights of a certain panel owned by Sanitary Steam Laundry, Inc.

....

Q:

You said that the lights were going towards you. Now, at what pace did these lights come toward you?

A:

Fast pace."

Charito Estolano, another passenger who was seated in front of the Cimarron, similarly testified that they just saw the panel truck hurtling toward them. She said:[8]

Q

Now, you said earlier that you were involved in an accident. What was that accident?

A

An approaching vehicle hit us.

Q

Now, why do you know that there was the approaching vehicle?

A

There was a light which glared us and I knew that it came from a vehicle. We were blinded.

Q

Where was this vehicle headed for?

A

Headed for Cavite.

Q

Coming from?

A

Coming from Manila, I think.

Q

So that, actually, in relation to your vehicle, it was coming from the opposite direction?

A

Yes, sir.

Q

Now, you said that the light headed towards your vehicle. On which side of the highway was your Tamaraw vehicle travelling at that time?

A

We were on the right lane.

Q

Did you actually see this light from the vehicle coming from the opposite direction heading towards your vehicle?

A

Yes, sir.

Q

And what happened after that?

A

After that, there was an impact.

Q

All right. Will you tell the Court which bumped which?

A

We were bumped by the vehicle which was coming from the opposite direction.

The foregoing testimonies show that the driver of the panel truck lost control of his vehicle and bumped the Cimarron. Hence, even if both headlights of the Cimarron were lighted, it would have been bumped just the same because the driver of the panel truck could not stop despite the fact that he applied the brakes. Petitioner's contention that because of "decreased visibility," caused by the fact that the Cimarron allegedly had only one headlight on, its driver failed to see the Cimarron is without any basis in fact. Only its driver claimed that the Cimarron had only one headlight on. The police investigator did not state in his report or in his testimony that the Cimarron had only one headlight on.

Nor is there any basis in fact for petitioner's contention that because of overcrowding in the front seat of the Cimarron there was "decreased maneuverability" which prevented the Cimarron driver from avoiding the panel truck. There is absolutely no basis for this claim. There is nothing in the testimonies of the passengers of the Cimarron, particularly Charito Estolano, who was seated in front, which suggest that the driver had no elbow room for maneuvering the vehicle. To the contrary, from the testimony of some of the witnesses,[9] it appears that the driver of the Cimarron tried to avoid the collision but because of the emergency created by the speeding panel truck coming from the opposite direction he was not able to fully move his Cimarron away from the path of the oncoming vehicle. We are convinced that no "maneuvering" which the Cimarron driver could have done would

have avoided a collision with the panel truck, given the suddenness of the events. Clearly, the overcrowding in the front seat was immaterial.

All these point to the fact that the proximate cause of the accident was the negligence of petitioner's driver. As the trial court noted, the swerving of petitioner's panel truck to the opposite lane could mean not only that petitioner's driver was running the vehicle at a very high speed but that he was tailgating the passenger jeepney ahead of it as well.

Petitioner's driver claimed that the distance between the panel truck and the passenger jeepney in front was about 12 meters.[10] If this was so, he would have had no difficulty bringing his panel truck to a stop. It is very probable that the driver did not really apply his brakes (which is why there were no skid marks) but that finding the jeepney in front of him to be in close proximity, he tried to avoid hitting it by swerving his vehicle to the left. In the process, however, he invaded a portion of the opposite lane and consequently hit the Cimarron. Indeed, the panel truck driver testified that his vehicle was running at the speed of 60 miles per hour.[11] He tried to correct himself when asked by petitioner's counsel whether the panel truck speedometer indicated miles or kilometers by saying that the speedometer measured kilometers and not miles, but on cross examination his testimony got muddled.[12]

Be that as it may, whether the driver meant 60 miles per hour (which could be 96.77 kilometers per hour) or 60 kilometers per hour, the fact remains that the panel truck was overspeeding because the maximum allowable speed for trucks and buses on open country roads, such as the Aguinaldo Highway in Imus, Cavite, is only 50 kilometers per hour.[13]

The case of Bayasen, which petitioner invokes, cannot apply to this case. There was no swerving of the vehicle in that case but skidding, and it was caused by the fact that the road was wet and slippery. In this case, the road was dry and safe. There was no reason for the vehicle to swerve because of road condition. The only explanation for this occurrence was human error.

Petitioner's reliance on the McKee case is also misplaced. In that case, the driver of the vehicle at fault, a truck, had an opportunity to avoid the collision but he ignored the signals from the other vehicle, a car, to slow down and allow it to safely pass the bridge. In this case, there was no such opportunity given the Cimarron on the night of the mishap. Everything happened so quickly that before the passengers of the Cimarron knew it, the vehicle had been bumped by the truck.

Second. On its liability as employer of the negligent driver, petitioner contends that the non-submission of the NBI clearance and police clearance of its driver does not mean that it failed to exercise the diligence of a good father of the family in the selection and supervision of its employees. It argues that there is no law requiring employees to submit NBI and police clearance prior to their employment. Hence, petitioner's failure to require submission of these documents does not mean that it did not exercise due diligence in the selection and supervision of its employees. On the other hand, it asserts that its employment of Herman Hernandez as a driver means that he had passed the screening tests of the company, including submission of the aforementioned documents. Petitioner maintains that the presumption is that the said driver submitted NBI and police clearance.

Petitioner likewise contends that the Court of Appeal's position that it failed to exercise due diligence in the selection and supervision of its employees by not requiring its prospective employees to undergo psychological and physical tests before employment has no basis in law because there is no law requiring such tests prior to hiring employees.

The petitioner's contention has no merit. The Court of Appeals did not say that petitioner's failure to submit NBI

and police clearances of its driver was proof that petitioner failed to exercise due diligence in the selection of its employees. What the Court of Appeals said was that petitioner's policy of requiring prospective employees to submit NBI and police clearance and to have at least two (2) years experience as driver prior to employment was not enough to prove the exercise of due diligence and that even this policy petitioner failed to prove by its failure to present the driver's NBI and police records during the trial.

With respect to the requirement of passing psychological and physical tests prior to his employment, although no law requires it, such circumstance would certainly be a reliable indicator of the exercise of due diligence. As the trial court said:[14]

. . . No tests of skill, physical as well as mental and emotional, were conducted on their would-be employees. No on-the-job training and seminars reminding employees, especially drivers, of road courtesies and road rules and regulations were done. There were no instructions given to defendant's drivers as to how to react in cases of emergency nor what to do after an emergency occurs. There was even failure on the part of defendant to present its concerned employee's 204 file. All these could only mean failure on the part of defendant to exercise the diligence required of it of a good father of a family in the selection and supervision of its employees.

Indeed, driving exacts a more than usual toll on the senses.[15] Accordingly, it behooves employers to exert extra care in the selection and supervision of their employees. They must go beyond the minimum requirements fixed by law. In this case, David Bautista, the office manager of petitioner in its Dasmariñas plant, said that petitioner has a policy of requiring job applicants to submit clearances from the police and the NBI. In the case of applicants for the position of driver they are required to have at least two (2) years driving experience and to be holders of a professional driver's license for at least two years. But the supposed company policies on employment were not in writing. Nor did Bautista show in what manner he supervised the drivers to ensure that they drove their vehicles in a safe way.

Third. With respect to the question of damages, we find no reversible error committed in the award of actual damages to private respondents. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[16] Here, the actual damages claimed by private respondents were duly supported by receipts and appear to have been really incurred.

As to the moral damages awarded, we find them to be reasonable and necessary in view of the circumstances of this case. Moral damages are awarded to allow the victims to obtain means, diversion, or amusement to alleviate the moral suffering they had undergone due to the defendant's culpable action.[17] In this case, private respondents doubtless suffered some ordeal because some of them lost their loved ones, while others lost their future. Within the meaning of Art. 2217 of the Civil Code, they suffered sleepless nights, mental anguish, serious anxiety, and wounded feelings. An award of moral damages in their favor is thus justified.

The award of P50,000.00 to the heirs of Jason Bernabe as death indemnity is likewise in accordance with law.[18] However, the award of P100,000 to the heirs of Dalmacio Salunoy, denominated in the decision of the trial court as "moral damages and unearned income" cannot be upheld. The heirs were already included among those awarded moral damages. Marilyn Salunoy was ordered to be paid P10,000, Jack Salunoy, P10,000, and their mother Nenita Salunoy, P20,000, as moral damages. The amount of P100,000 was presumably awarded primarily for loss of earning capacity but even then the amount must be modified. In accordance with our cases[19] on this question, the formula for determining the life expectancy of Dalmacio Salunoy must be determined by applying the formula $\frac{2}{3}$ multiplied by (80 minus the age of the deceased). Since Salunoy was 46 years of age at the time of his death, as stated in his death certificate, then his life expectancy was 22.6 years, or up to 68 years old.

Next, his net earnings must be computed. At the time of his death, Dalmacio Salunoy was earning more than P900.00 a month as bookkeeper at the PMCI so that his annual gross earnings was about P11,000.00. From this amount, about 50% should be deducted as reasonable and necessary living expenses because it seems his wife occasionally finds work and thus helps in the household expenses.

Based on the foregoing, his net earning capacity was P124,300.00 computed as follows:[20]

net earning life

capacity (x) = expectancy x [Gross annual income less reasonable & necessary living expenses]

x = [2 (80-46)] x [P11,000 - P5,500]

3 = 22.6 x 5,500

= P124,300.00

In addition, the heirs of Dalmacio Salunoy should be paid P50,000.00 as death indemnity.

Finally, the award of attorney's fees should be disallowed as the trial court did not give any justification for granting it in its decision. It is now settled that awards of attorney's fees must be based on findings of fact and law, stated in the decision of the trial court.[21]

WHEREFORE, the decision of the Court of Appeals is MODIFIED in the sense that the award of P100,000.00 denominated "for moral damages and unearned income" is deleted, and in lieu thereof the amount of P124,300.00 for loss of earning capacity and the further amount of P50,000.00 for death indemnity are awarded to the heirs of Dalmacio Salunoy and the award of P50,000.00 for attorney's fees is disallowed. In all other respects the appealed decision is AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), Puno, and Martinez, JJ., concur.

[1] 103 SCRA 197 (1981).

[2] 211 SCRA 517 (1992).

[3] CESAR SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES 20 (1993).

[4] Rollo, p. 29.

[5] Id., pp. 74-75.

[6] TSN, pp. 22-23, Sept. 1, 1983.

[7] TSN, pp. 8-9, July 6, 1981.

[8] TSN, pp. 13-14, April 28, 1981.

[9] Testimony of Nicanor Bernabe III, TSN, p. 9, July 6, 1981; Testimony of Charito Estolano, TSN, p. 15, April 28, 1981.

[10] TSN, p. 9, Sept. 19, 1983.

[11] TSN pp. 21-22, Sept. 1, 1983.

[12] Id., pp. 6-8, Sept. 19, 1983.

[13] R.A. No. 4136, ART. I, §35(2).

[14] RTC Decision, p. 4.

[15] Valenzuela v. Court of Appeals, 253 SCRA 316 (1996).

[16] People v. Marollano, G.R. No. 105004, July 20, 1997.

[17] Philtranco Service Enterprises v. Court of Appeals, G.R. No. 120553, June 17, 1997

[18] Ibid.

[19] Metro Manila Transit Corporation v. Court of Appeals, G.R. No. 116617, Nov. 16, 1998; Negros Navigation Co., Inc., v. Court of Appeals, 281 SCRA 534 (1997); Villa-Rey Transit, Inc, v. Court of Appeals, 31 SCRA 511 (1970).

[20] Ibid.

[21] Salao v. Court of Appeals, G.R. No. 107725, Jan. 22, 1998.

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