

**NAPOLEON TUGADE, SR., AND RIZALINA FABRO-TUGADE,
SUBSTITUTED BY HER HEIRS, NAMELY, NAPOLEON SR., NAPOLEON
JR., AND ZENAIDA, ALL SURNAMED TUGADE, PETITIONERS, VS.
COURT OF APPEAL...**

G.R. No. 120874. July 31, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

While this Court is not a trier of facts, there are instances however when we are called upon to re-examine the factual findings of the trial court and the Court of Appeals and weigh, after considering the records of the case, which of the conflicting findings is more in accord with law and justice.[1] Such is the case at bar.

The antecedent facts of this case are as follows:

On June 12, 1980 at around 12:00 noon, Engr. Henry Tugade of the Pangasinan Electric Cooperative, Inc. (Panelco) rode in a company rover jeep together with four other employees bound from the Panelco compound in Bani to Bolinao, Pangasinan. Somewhere in Tiep, Pangasinan, a Dagupan bus that was also headed for Bolinao, began to follow the rover jeep. While the bus was trying to overtake the jeep, the latter turned turtle and caused four of its five occupants to fall out of the jeep causing the death of Tugade and another passenger by the name of Consuelo Estolonia.[2]

Separate cases for damages, docketed as Civil Cases Nos. A-1368 and A-1384 were filed by the heirs of the two deceased before the Regional Trial Court of Pangasinan against Panelco and Dagupan Bus Co. and their respective drivers, Honorato Areola and Renato Quiambao. It is Civil Case No. A-1368 filed by the heirs of Henry Tugade, which is now the subject of the present petition.

The Regional Trial Court of Pangasinan (Branch 55) held Panelco and its driver liable, thus:

As a consequence and in view of the evidence on record, the Court holds and so finds that the accident occurred due to the fault or negligence of Panelco and its driver Honorato Areola. The negligence of Panelco consists in having allowed its rover jeep which is mechanically defective, unsafe and not roadworthy to be operated on a highway. On the other hand, the defendant-driver Honorato Areola was likewise, negligent in driving a vehicle which was not roadworthy, unsafe and with a mechanical defect.

The Court finds that the defendants Panelco and Honorato Areola are liable to pay to the plaintiffs in Civil Case No. A-1368 damages, as follows: actual damages, P99,131.00 (Exhibits "H" to "H-3", "I" to "I-4" and "K"), attorney's fees, P20,000.00, moral damages, P20,000.00 and exemplary damages, P10,000.00

As to loss of earning capacity, it has been held in *Villa-Rey Transit vs. Court of Appeals*, 31 SCRA 511, that this is based on net earnings and not gross earnings. No evidence was introduced to show the net earnings. However, under the Circumstances, the Court holds that a monthly net earning of P500.00 would be reasonable. Using the formula in the *Villa-Rey* case, the life expectancy of the late Henry Tugade would be 36

years, hence the Court awards P216,000.00 for loss of earning capacity.

WHEREFORE, the Court hereby renders judgment:

- Dismissing the complaint and cross-claim as against Dagupan Bus in Civil Case No. A-1368;
- Dismissing the complaint in Civil Case No. A-1384;
- In Civil Case No. A-1368, ordering the defendants Pangasinan Electric Cooperative, Inc., and Honorato Areola to pay, jointly and severally, to the plaintiffs, the following:

P 99,131.00 as actual damages;
216,000.00 for loss of earning capacity;
20,000.00 moral damages; and
10,000.00 exemplary damages; and
20,000.00 attorney's fees

With costs against said defendants.[3]

In arriving at its decision, the trial court explained that:

xxx Rosie Castrence, a passenger of Bus No. 244 who saw the accident testified categorically that the rover jeep turned turtle in front of the Dagupan Bus when the jeep was about 5 meters in front of the Bus and the jeep turned turtle even without being bumped by the Dagupan Bus. The Court considers this witness as an unbiased witness as she appears not to be an interested party. She was also in a good position to observe in detail what actually happened at the scene of the accident as she was seated on the right front seat of the bus. The Court believes this witness more than the other witnesses who do not appear to be disinterested.

Furthermore, it is not credible that if the rover jeep was hit on its left rear, it will turn turtle on its left side. The natural effect or tendency is for the jeep to be pushed or even thrown towards its right side. If the jeep turned turtle towards the left, it must have been due to some other cause than being hit by the bus on its left side.

The physical facts which do not lie as well as testimonial evidence support the stand of Dagupan Bus that the bus did not hit the left rear of the rover jeep.

If the bus did not hit the left rear of the jeep what then caused the latter to turn turtle. There is merit in the contention of defendant Dagupan Bus that the cause was due to some mechanical defect. By Defendant Areola's own admission, the rover jeep was being fixed by the Chief mechanic at the motor pool of Panelco, when he arrived at their compound, and that the jeep was "Quite old".

Likewise, Rosie Castrence also testified that when she first saw the Panelco jeep at Tiep, Bani, Pangasinan, the jeep was already zig-zagging and wiggling, a sign that indeed the jeep had some mechanical defect.

Another mark of a mechanical defect in the jeep was the fact that the right front wheel and rear wheel of the jeep were detached because their spindles were broken. This came from the mouth of Panelco's witness Florencio Celeste.

The next issue to be resolved is what was the cause of death of Henry Tugade? Plaintiff's theory is, of course, that Henry Tugade died because he was run over and pinned under the left front wheel of Dagupan Bus No. 244 crushing his head and upper body. This is the same theory of defendants Panelco and Areola. Defendants Dagupan Bus and Quiambao deny this claim and their theory is that Henry Tugade's death was caused by the violent impact of his head against the hard pavement of the road when he was thrown out of the rover jeep.

The plaintiff's theory is, however, contradicted by their own medico legal expert Dr. Wilfredo Nazareno who testified positively that the fatal injury which caused the death of Henry Tugade were the fractures on his head which could have been due to the impact of the head against the asphalted road.

Again plaintiff's theory is contradicted by Panelco's own witness Florencio Celeste, Chief Engineer, who was the only one who did not fall out of the jeep, when he testified that the left front wheel of the bus did not rest on the head of Henry Tugade and the wheel of the bus did not run over the head of the victim.

Rosie Castrence, a disinterested witness, also declared that the left front tire of the bus did not run over the head of Henry Tugade.[4]

Petitioners went to the Court of Appeals questioning only the award of damages and attorney's fees.[5] They claimed that the lower court erred in: finding that the monthly earnings of the late Henry Tugade at the time of his death was only P500.00; disregarding the evidence on record showing the monthly earnings of the late Henry Tugade; not considering the social, educational and economic status of the plaintiffs in its assessment of the moral and exemplary damages; and setting the sum of P20,000.00 as attorney's fees.[6]

Respondent Panelco also appealed to the Court of Appeals from the decision of the trial court and assailed its ruling that the negligence of Panelco and its driver was the proximate cause of the accident.[7]

In its decision dated September 7, 1994,[8] the Court of Appeals reversed the findings of the trial court, declared that Dagupan Bus, as an employer, had exercised due diligence in the selection and supervision of its employees and disposed of the case in this wise:

WHEREFORE, in view of all the foregoing, the decision of the court a quo is reversed, but only insofar as it holds defendant Pangasinan Electric Cooperative, Inc. liable, and defendant Renato Quiambao is ordered to pay to defendant-appellant Pangasinan Electric Cooperative, Inc., P7,500.00 as temperate damages, P10,000.00 as attorney's fees and costs of suit.[9]

The appellate court explained, thus:

The testimony of Castrence, on which the court a quo heavily relied in its finding of facts, is contradicted by the greater weight of evidence on record.

First, there is no evidence whatsoever --- for either one of the parties --- of a blown-out tire. What the evidence on record indicates is that the two right wheels of the jeep were detached. The testimony regarding a blown-out tire is not even in consonance with the theory of Dagupan, that is, that the wheels were detached due to mechanical defects.

Second, her testimony that the jeep was wiggling and zigzagging is contradicted by the testimonies of Florencio Celeste and Cipriano Nacar, passengers of the jeep and witnesses for plaintiffs Tugade, to the effect that their ride was smooth and normal. (TSN, September 29, 1983, pp. 10, 43 & 66; November 20, 1984, p. 7)

Third, her testimony regarding the sitting arrangement of passengers of the jeep is contradicted by the testimony of Cipriano Nacar, passenger of the jeep and witness for plaintiffs Tugade. According to Nacar, he and Estolonio were seated at the rear of the jeep; the driver Areola was behind the steering wheel, with Celeste to his right and Tugade on the rightmost. In other words, Celeste was between Areola and Tugade, and no one was seated to the left of the driver. (TSN, September 29, 1983, pp. 9-10)

Fourth, her testimony that Tugade's head was about one foot from the left front tire of the bus is likewise contradicted by the testimonies of Cipriano Nacar and Honorato Areola that the tire of the bus was partly resting on the head of Tugade. In fact, the bus driver Renato Quiambao even had to back up the bus so that Tugade's body may be pulled out from below. (ibid., pp. 22-23)

Fifth, her testimony that Tugade's shirt was checkered is also contradicted by Exhibit G, a photograph of the deceased as he lay on the ground. The photograph shows Tugade wearing a plain white shirt.

Finally, her testimony that she did not see Estolonio after the accident because the latter was inside the jeep is

again contradicted by the finding of the court a quo that "all the passengers of the rover jeep were thrown out of the vehicle except Florencio Celeste and the body of Henry Tugade landed on the left lane of the road and was in front of the left front wheel of Bus No. 244." (underscoring ours, Decision, p. 2) In other words, Estolonio, just like Tugade, was sprawled on the ground. (ibid., p. 22)

Castrence's testimony is also marred by improbabilities.

First, she claims to have noticed the color of Tugade's pants who was seated --- in the front of the jeep. It is quite improbable that Castrence, being seated inside the bus, could see the color of the pants of Tugade who was seated on the front seat of the jeep. Second, while she noticed the passengers in the front of the jeep --- indeed she even noticed the color of the pants one of them was wearing --- she could not tell whether or not there were passengers at the back. Third, it is also improbable that the driver and the passengers of the jeep simply continued with their journey, oblivious to the wiggling and zigzagging of their vehicle.

Moreover, even disregarding the incredibility of Castrence's testimony, still the version that the accident was due to a mechanical defect that allowed the wheels to be detached cannot be given credence. If the cause of the accident was that both wheels on the right side were detached, then the jeep would not have turned turtle to its left, but to its right. If there had been no wheels to support its right side, the jeep should have turned turtle to its right, but it turned to its left instead.

The court a quo reasons that "it is not credible that if the rover jeep was hit on its left rear, it will turn turtle on its left side. The natural effect or tendency is for the jeep to be pushed or even thrown towards its right side." (Decision, p. 3) The court a quo, however, seems to have disregarded the testimony of Honorato Areola that the jeep first swerved to the right, then to the left. (TSN, October 15, 1984, p. 48) To be noted also is that a jeep is inherently maneuverable, and may easily swerve from side to side when hit from its left rear portion. Moreover, after the accident, both the jeep and the bus were at the left side of the highway. If the bus were not attempting to overtake the jeep, why then was it at the left side of the highway?

As may be seen from the foregoing, the court a quo failed to take into account the discrepancies and inconsistencies of Castrence's testimony vis-à-vis established facts and other evidence on record.

Moreover, the court a quo misappreciated the testimony of Areola that the jeep was being checked up at the Panelco motor pool, and interpreted such testimony to mean that the jeep was being fixed or repaired due to a mechanical defect. First, the mere fact that the jeep was at the motor pool does not mean that it was there due to a mechanical defect. As testified by Areola, it was being subjected to a check-up (TSN, October 9, 1984, pp. 41-42), which may have been simply routine. Second, even assuming that the jeep had a mechanical defect, its presence at the motor pool may also mean that such defect had been repaired and that the jeep was "quite old" does not necessarily mean that it had a mechanical defect. That two wheels were detached from the jeep and that its spindle was broken can be just as reasonably explained by the fact that the jeep turned turtle after being sideswiped by an overtaking bus.

On the contrary, Celeste and Nacar, witnesses for the plaintiffs Tugade, consistently testified that their ride was normal and smooth.

In light of the foregoing, the conclusion must be that the accident was caused by the negligence of Quiambao in driving Bus No. 244, as testified to by Areola, Nacar and Celeste, for which he must be held civilly liable.[10]xxx

Hence, petitioner filed the present "petition for certiorari"[11] of the decision of the Court of Appeals and the resolution dated June 27, 1995 denying petitioners' motion for reconsideration.

Petitioners contend that the Court of Appeals:

I

...COMMITTED AN ERROR OF LAW AND VIOLATED THE RULES OF EVIDENCE BY REJECTING THE TESTIMONY OF A DISINTERESTED WITNESS AND ADMITTED THE BIASED TESTIMONIES OF THE EMPLOYEES-WITNESSES FOR PRIVATE RESPONDENT PANELCO.

II

...COMMITTED AN ERROR OF LAW BY SUBSTITUTING ITS FINDINGS OF FACTS TO THAT OF THE TRIAL COURT WHICH WAS IN A BETTER POSITION TO EVALUATE AT FIRST HAND THE EVIDENCE ADDUCED BY THE PARTIES, PARTICULARLY THE SITUATION, Demeanor AND SINCERITY OF THE WITNESSES.

III

...MISINTERPRETED, IF NOT DELIBERATELY DISREGARDED, THE BREAKING OF THE SPINDLE AND THE DETACHMENTS OF THE FRONT RIGHT AND REAR WHEELS OF THE ROVER JEEP OF PRIVATE RESPONDENT PANELCO WHICH ARE CONCLUSIVE PROOF OF THE ROAD UNWORTHINESS OF THE ROVER JEEP THAT TURNED TURTLE CAUSING THE DEATH OF THE LATE HENRY TUGADE.

IV

...ERRED IN ARRIVING AT A CONCLUSION THAT PRIVATE RESPONDENT WAS NOT NEGLIGENT AT THE TIME OF THE ACCIDENT AND IS NOT THEREFORE LIABLE FOR THE UNTIMELY DEATH OF HENRY TUGADE.

V

...ERRED IN NOT APPLYING PERTINENT JURISPRUDENCE AND PROVISIONS OF LAWS IN REVERSING THE DECISION OF THE TRIAL COURT.[12]

Petitioners stress that they only questioned before the Court of Appeals the amount of damages, loss of earning capacity and attorney's fees awarded by the trial court in its decision, but the appellate court disregarded the factual findings and conclusions of the trial court and substituted its own findings of fact. Petitioners claim that this violates the doctrine that the findings of the trial court on the credibility of witnesses are entitled to great weight on appeal as it is in a better position to decide the question on credibility having seen and heard the witnesses themselves. Petitioners further claim that: the Court of Appeals erroneously disregarded the testimony of Rosie Castrence which the trial court found to be a disinterested party, based on minor and trivial inconsistencies;[13] the appellate court overlooked or failed to consider the breaking of the spindles and the detachment of the front and rear wheels of the rover jeep owned by and belonging to respondent Panelco which led the trial court to conclude that the accident was due to the negligence of private respondent as it allowed its rover jeep which is mechanically defective and not roadworthy to be operated on a highway and due to the negligence of defendant Honorato Areola in driving a vehicle which was not roadworthy.[14]

In its Comment, respondent Panelco points out that the factual findings of the Court of Appeals is not reviewable by the Supreme Court.[15]

Petitioners in their Reply, meanwhile, argue that where the findings of the Court of Appeals and the trial court are contrary to each other, such as in this case, the Supreme Court may scrutinize the evidence on record.[16]

In its Rejoinder, respondent Panelco reiterates that: the petitioners raised only factual issues which in effect will make this Court a trier of facts; the Court of Appeals, contrary to the contention of petitioners, actually set the record straight by carefully scrutinizing the factual evidence; the appellate court pointed out in detail the inconsistencies in the findings of the lower court unlike the haphazard way by which the lower court reached its

conclusions.[17]

We find the petition to be impressed with merit.

As mentioned earlier, it is settled that as a rule, our jurisdiction in cases brought to us from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[18]

However, we have consistently enunciated that we may review the findings of fact of the Court of Appeals:

(a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[19] [Emphasis ours]

In this case, the factual findings of the trial court and the Court of Appeals are conflicting. Thus, it behooves this Court to review the findings of facts of the lower courts.

The trial court gave weight to the testimony of Rosie Castrence, a passenger of Dagupan bus who testified that the Panelco rover jeep turned turtle without being hit by the bus from behind; while the Court of Appeals pointed out inconsistencies in her testimony and gave weight to the version of the employees of Panelco that the jeep turned turtle because it was hit by the bus from behind.

The trial court reasoned that Castrence, a fish vendor who happened to be a passenger at the time of the accident, was credible and unbiased being a disinterested witness, unlike the other witnesses who are employees of Panelco. It also explained that she was in a good position to observe in detail what actually happened at the scene of the accident as she was seated at the right front seat of the bus.[20]

On the other hand, the Court of Appeals considered her testimony not worthy of belief because of inconsistencies especially vis-a-vis the testimonies of the employees of Panelco, namely: Areola, Nacar and Celeste,[21] to which the appellate court gave greater weight and on which basis it concluded that the accident was caused by the negligence of Quiambao in driving Bus No. 244 for which he must be held civilly liable.[22]

In ascertaining the facts of the case, it would have greatly aided the courts if photographs of the vehicles were presented during the trial. However, none was presented. Hence, we are constrained to rely mainly on the testimonies of the witnesses.

After reviewing the entire records of the case, we find compelling reasons to reverse the findings of the Court of Appeals, and affirm the appreciation of facts of the trial court.

It is basic that findings of facts of trial courts are accorded by appellate courts with great, if not conclusive effect. This is because of the unique advantage enjoyed by trial courts of observing at close range the demeanor, deportment and conduct of witnesses as they give their testimonies.[23] Trial courts have the unique advantage of being able to observe that elusive and incommunicable evidence of the witness' deportment on the stand while testifying --- the brazen face of the liar, the glibness of the schooled witness in reciting a lesson, the itching

over-eagerness of the swift witness, as well as the honest face of the truthful one.[24] Indeed, assignment of values to declarations on the witness stand is best done by the trial judge who, unlike appellate magistrates, can weigh firsthand the testimony of a witness.[25]

While there may be inaccuracies in Castrence's testimony as pointed out by the appellate court--the mention of a blown out tire, the seating arrangement of the passengers of the rover jeep, the color of the shirt of the deceased, and the location of all the passengers of the jeep after it turned turtle---we deem such discrepancies negligible considering the totality of her testimony. Records show that she was called to the witness stand six years after the accident happened. It is therefore understandable that she would miss recalling some details. As we held in the recent case of *People vs. Delim*:

The inconsistencies in the testimonies of [witnesses] do not render them incredible or their testimonies barren of probative weight. It must be borne in mind that human memory is not as unerring as a photograph and a person's sense of observation is impaired by many factors... A truth-telling witness is not always expected to give an error-free testimony considering the lapse of time and the treachery of human memory. What is primordial is that the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of his testimony...Inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony.[26]

In her testimony, Rosie Castrence said that she saw the jeep turn turtle in front of their bus.

Q

Mrs. Witness, you testified that the PANELCO jeep turned turtle in front of the Dagupan Bus, how close was the Dagupan Bus to the PANELCO jeep when you saw it turn turtle?

A About five (5) meters in front the Dagupan Bus when it turn (sic) turtle, sir.

Q In other words, the jeep turned turtle even without being bumped by the Dagupan Bus?

A Yes, sir.[27]

She also testified that before the jeep turned turtle she saw that it was wiggling.

A When we were still at Barangay Tiep I have seen already that jeep.

xxx xxx xxx

Q What did you observe if any about the jeep that you were following?

A

The jeep was already wiggling and was zigzagging along the way.[28]

We find this testimony not only credible but also consistent with the physical evidence as well as the testimonies of Panelco's own employees.

Engr. Florencio Celeste, who was seated beside Henry Tugade, testified that after the jeep turned turtle he saw that the right wheels were detached and that the spindle was broken.

Q If it turned turtle, did you observe the jeep suffered (sic) any mechanical defect or parts were broken?

A After the jeep turned turtle, I noticed that the right front wheel and rear wheel of the jeep were detached, sir.

xxx xxx xxx

Q Did you see how the wheels were detached?

A The spindle were (sic) broken, sir.[29]

Engr. Agustin Erez, the Officer In Charge of the Motorpool of Panelco at the time of the accident, also admitted in his testimony that the rover jeep was merely assembled in their motorpool, thus:

Q

You mentioned that the rover jeep was assembled in February 1980, if it was assembled in February 1980, what was the condition before you assembled? (sic)

A We put all the spare parts new, we bought all the spare parts new, all spare parts are new.

Q So you want to make us understand that it was almost a junk at the time you repair it?

A We bought the chassis, the engine and everything so all the spare parts are new.

Q At the time you repaired it in 1980 (interruption)

A I assembled it.[30]

xxx xxx xxx

Q Before you repaired it in February 1980, was it in running condition?

A

Before we repaired it, it was not in running condition, there was no jeep before the repair, they are all spare parts and we assembled it.[31]

The driver of the jeep and one of the defendants, Honorato Areola, also admitted that the engine of the jeep at the time of the accident was already old.

Q

...And what year Mr. Witness is the model of the rover jeep if you really know the model of the different vehicles?

A I already forgot, sir. It is diesel model.

Q To make specific Mr. Witness, what year was this model, was it the model 69, 65 or what?

A I cannot remember, sir.

Q

But in your experience as driver, did this rover jeepney, new or old, at the time you drove it on June 12, 1980.

A Quite old already, sir.

Q What about the body of the jeepney, also old like the engine?

A The body is newly assembled, sir.[32]

Worth noting also is the admission of Engr. Celeste that the jeep did not have a speedometer.

Q

Now, you estimated the speed of the jeep at 45 to 50 kilometers per hour, because according to you you are

also a driver and you always look at the speedometer is that correct?

A Yes, sir.

Q

This rover jeep having been made, home made at the Panelco Motor pool, did not have speedometer, is that correct?

A It does not have speedometer, so the speedometer does not function, sir.

Q Aside from the speedometer there were many parts of the jeep which were not functioning is that correct?

A All of those parts in the Panel board except its speedometer cable.

Q

And so, when you said that the jeep was running about 45 to 50 kilometers the truth is the speed could have been even less than 45 kilometers or more than 50 kilometers.

A That is approximate, sir.[33]

In sum, we find that with the testimony of Castrence, the broken spindle of the rover jeep and the admissions of Panelco's own employees that the jeep was merely assembled, had an old engine, and did not have any speedometer, manifest gross negligence on the part of Panelco and its driver Honorato Areola for which they should be held liable to pay damages. The trial court correctly held both Panelco and its driver liable for using an unsafe vehicle in transporting Panelco's employees.

As provided for in the New Civil Code:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done...

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

xxx xxx xxx

Employers shall be liable for the damage 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.

xxx xxx xxx

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.

Areola, as driver of the vehicle, did not personally check the condition of the vehicle before using it.

Q And when you arrive at the Panelco compound this jeep was already ready to be driven?

A It was in the motor pool we were checking up.

Q But you yourself did not go to the motor pool to get the jeep?

A I just see the jeep but I did not go under the jeep, sir.

Q

You mean to say that the jeep was in an elevated flat (sic) form at the time when you saw it at the Panelco

compound being checked up?

A

Its not in the elevated place but it was in the Panelco compound, I am looking for the Chief Mechanic checking up the jeep. I was looking at the jeep being checked up by the Chief Mechanic, sir.

Q How many mechanics were attending this rover jeep at the time you were looking at the jeep?

A They were many but who was looking after was the Chief Mechanic, sir.

xxx xxx xxx

Q And these mechanics of the Panelco were helping or attending the Chief Mechanic?

A I do not know, sir, because they were doing something.

Q So all these persons were working on the rover jeep, is that correct?

A No, sir.[34] (sic)

What was admitted was the fact that it was his first time to drive said vehicle[35] and that he did not know whether or not the vehicle was registered at the time of the accident.

Q

xxx You are aware that the rover jeep was not registered for that year 1980, the jeep you were driving, is that correct?

A

That is what I do not know, sir.

xxx xxx xxx

Q

Is it a matter of your practice, that when you drive a vehicle you do not determine and find out anymore whether the registration certificate is found in the vehicle?

A I relied that the papers are complete, sir.

Q

But you yourself do not examine anymore whether the vehicle that you are driving, that you are going to drive has with the registration certificate.

A No more, sir.[36]

Panelco meanwhile is liable both as owner of the mechanically defective vehicle under Art. 2176 and as employer of the negligent driver under Art. 2180.

Under Art. 2180, Panelco as employer of Areola is primarily and solidarily liable for the quasi-delict committed by the latter. It is presumed to be negligent in the selection and supervision of its employees by operation of law and may be relieved of responsibility for the negligent acts of its driver, who at the time was acting within the scope of his assigned task, only if it can show that it observed all the diligence of a good father of a family to prevent damage.[37]

In this case, Panelco failed to show that it exercised the diligence of a good father of a family to prevent the damage and that it was diligent in the selection and supervision of its employees.

Areola in his testimony admitted that he did not undergo physical examination when he was hired as driver of the company[38] and that there were no records of his examination and interview during his application for employment.[39] He also admitted that Panelco never gave them seminars regarding driving but only received 'personal advice' from the managers.[40]

The use of a vehicle with a defective speedometer has been held by this Court as an indication of the owner's laxity in the operation of its business and in the supervision of its employees; clearly, a conduct below the diligence required by law.[41] In this case, the rover jeep of Panelco did not have a speedometer at all.

Finding both Panelco and its driver liable for the death of Henry Tugade, we now consider the amount of damages that should be awarded to the heirs of the deceased.

Following Art. 2206 of the Civil Code and recent jurisprudence, the heirs of the victim in this case are automatically entitled to P50,000.00 as indemnity for the death of Henry Tugade.[42]

Actual damages to be recoverable, must actually be proved and supported by receipts. In this case, the petitioners failed to present any receipt to prove the expenses they incurred. Nonetheless, temperate damages may still be given to the heirs of the victim under Art. 2224 of the Civil Code.[43] Based on prevailing jurisprudence, the amount of P25,000.00 as temperate damages is in order.[44]

We also find that petitioners are entitled to the award of attorney's fees which is proper where the acts and omissions of a party have compelled another to litigate or incur expenses to protect his rights and when deemed by the court as just and equitable.[45] We find no cogent reason to disturb the award of P20,000.00 as attorney's fees fixed by the trial court.

Moral damages should also be awarded for the mental anguish and moral suffering suffered by the heirs of Henry Tugade brought about by his untimely demise. As held by this Court, the award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante and therefore must be proportionate to the suffering inflicted.[46]

In this case, Napoleon Tugade, father of the deceased, testified as follows:

Q How many children do you have?

A We have three (3), sir.

xxx xxx xxx

Q

...about your second child, what is his profession or employment at present, will you name your second child?

A He is the late Henry Tugade, an Agricultural Engineer.

xxx xxx xxx

Q At the time you learn the death of your son Henry, how did you feel?

A

I was shocked and had a little mental torture because it's a shock that he is still young to die and professional and he is the only one earning among my children, so there was mental torture also to my wife and to my

family.[47]

Rizalina Tugade, mother of the victim, also testified as follows:

Q

And Mrs. Witness, at the time your son died do you know if he was a member of some civic organizations or associations?

A

During his lifetime when he was studying, when he was student, at the Araneta Univeristy, he was the President of the Engineer's Club Society.

Q

And of course as a mother, having his son that caliber, if said Henry your son, how did you feel on those occasions, as he was a member of some organizations.

A

I had a feeling of great pride, sir.

Q

This pride enjoyed as a mother, did it continue to be still in you as a pride enjoyed by a mother.

A Well, my pride is no more sir, he already died.

Q

And when at the time you learned for the first time of the death of your son Mrs. Witness, how did you feel as mother.

A I was miserably shocked, sir.

Q Aside from the shock, what else.

A

Well, I lost my hope, my pride and happiness.[48]

Under Art. 2206 of the Civil Code, the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Under the circumstances of the case at bar an award of P100,000.00 would be appropriate.[49]

As to indemnity for loss of earning capacity, we take note of Exh. L-1[50] showing Henry Tugade's compensation to be Eight Hundred Three Pesos (P803.00) a month which amounts to an annual income of P9,636.00. He was 26 years old at the time of his death. Using the formula enunciated in *People vs. Napalit*,[51] we compute his lost earning capacity thus:

$$\begin{aligned}\text{Net earning capacity} &= \frac{2}{3} \times (80-26) \times [P9,636.00 - \frac{1}{2}(P9,636.00)] \\ &= \frac{2}{3} \times (54) \times P4,818.00 \\ &= 36 \times P4,818.00 \\ &= P 173,448.00\end{aligned}$$

WHEREFORE, we REVERSE and SET ASIDE the decision of the Court of Appeals; AFFIRM the decision of the Regional Trial Court dated July 24, 1990 with the MODIFICATION that Pangasinan Electric Cooperative, Inc. (PANELCO) and Honorato Areola are ordered to pay jointly and severally the following amounts to the heirs of Henry Tugade:

- Death indemnity in the amount of Fifty Thousand Pesos (P50,000.00);
- Temperate damages in the amount of Twenty-Five Thousand Pesos (P25,000.00);
- Attorney's fees in the amount of Twenty Thousand Pesos (P20,000.00);
- Moral damages in the amount of One Hundred Thousand Pesos (P100,000.00);
- Loss of earning capacity in the amount of One Hundred Seventy Three Thousand, Three Hundred and Forty Eight Pesos (P173,448.00); and
- the costs of suit.

SO ORDERED.

Bellosillo, Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] First Metro Investment Corporation vs. Este del Sol Mountain Reserve Inc., G.R. No. 141811, 369 SCRA 99, 111(2001).

[2] Rollo, p. 22.

[3] Rollo, pp. 24-25.

[4] Rollo, pp. 23-24.

[5] Docketed as CA-G.R. CV No. 32106.

[6] Rollo, p. 30.

[7] Rollo, p. 40.

[8] Penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Pedro A. Ramirez and (now Presiding Justice) Cancio C. Garcia.

[9] Rollo, p. 47

[10] Rollo, pp. 41A-43.

[11] Based on the allegations of the petitioners, it is actually a petition for review under Rule 45 of the Rules of Court which was filed within the reglementary period.

[12] Rollo, p. 11.

[13] Rollo, p. 15.

[14] Rollo, pp. 16-17.

[15] Rollo, p. 67.

[16] Rollo, p. 75.

- [17] Rollo, pp. 81-82.
- [18] Twin Towers Condominium Corp. vs. Court of Appeals, G.R. No. 123552, February 27, 2003.
- [19] vs.
- [20] Rollo, p. 23.
- [21] Rollo, pp. 41A-43.
- [22] Rollo, p. 43
- [23] People vs. Marlon Delim et al., G.R. No. 142773, January 28, 2003.
- [24] People vs. Alcodia, G.R. No. 134121, March 6, 2003.
- [25] People vs. Patoc, G.R. No. 140217, February 21, 2003.
- [26] G.R. No. 142773, January 28, 2003.
- [27] TSN, June 17, 1986, pp. 35-36.
- [28] TSN, June 17, 1986, pp. 11-12.
- [29] TSN, November 20, 1984, pp. 14-15A.
- [30] TSN, November 27, 1984, p. 14.
- [31] TSN, November 27, 1994, pp. 15-16.
- [32] TSN, October 15, 1984, pp. 52-53.
- [33] TSN, November 20, 1984, pp. 50-51.
- [34] TSN, October 9, 1984, pp. 41-43.
- [35] TSN, October 15, 1984, pp. 37- 38.
- [36] TSN, October 15, 1984, p. 35.
- [37] Viron Transportation Co., Inc., vs. Delos Santos, G.R. No. 138296, 345 SCRA 509, 517-518 (2000), Victory Liner vs. Heirs of Malecdan, G.R. No. 154278, December 27, 2002.
- [38] TSN, October 15, 1984, pp. 40-41.
- [39] TSN, October 15, 1984, p. 38.
- [40] TSN, October 15, 1984, pp. 54-56.
- [41] Pestaño vs. Sumayang, G.R. No. 139875, 346 SCRA 870, 876 & 879 (2000).
- [42] Victory Liner, Inc. vs. Heirs of Andres Malecdan, G.R. No. 154278, December 27, 2002.
- [43] Viron Transportation Co., Inc., vs. Alberto Delos Santos, G.R. No. 138296, 345 SCRA 509, 519 (2000).
- [44] People vs. Tinampay, G.R. No. 146271, May 29, 2003.
- [45] Art. 2208 (2) & (11) of the Civil Code.
- [46] Metro Manila Transit Corporation vs. Court of Appeals, G.R. No. 116617, 298 SCRA 495, 508 (1998).

[47] TSN, December 19, 1983, pp. 4-8.

[48] TSN, March 6, 1984, pp. 23-24.

[49] Victory Liner, Inc. vs. Heirs of Andres Malecdan, G.R. No. 154278, December 27, 2002.

[50] Records, p. 114.

[51] G.R. Nos. 142919 & 143876, February 4, 2003.

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