SUPREME TRANSLINER INC., FELIPE SIA AND NOVENCIO FLORES, PETITIONERS, VS. HON. COURT OF APPEALS, GLORIA BRAZAL AND MINOR LOTIS BRAZAL, REPRESENTED BY HER FATHER, NOEL BRAZAL, RE...

G.R. No. 125356. November 21, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition seeks to annul the decision[1] dated September 21, 1995, of the Court of Appeals in CA G.R. No. 39784, and its resolution[2] dated June 18, 1996 denying petitioners' motion for reconsideration.

Petitioners Supreme Transliner Inc. and Felipe Sia are the registered owners of a bus driven by co-petitioner Novencio Flores. On September 24, 1990, the bus collided with a passenger jeepney carrying private respondents Gloria and Lotis Brazal. At the time of the incident, the jeepney was owned and registered in the name of Marcelino Villones and driven by Reynaldo Decena.

As a result of the collision, private respondents suffered injuries. They instituted Civil Case No. SP-3312 for damages against petitioners based on quasi-delict and against Villones and Decena for breach of contract. Petitioners, in turn, filed a third-party complaint against Country Bankers Insurance Company, insurer of the Supreme Transliner bus.

During the trial, Gloria Brazal testified that on September 24, 1990, she and her daughter Lotis were on board the passenger jeepney when the Supreme Transliner bus hit it, causing them injuries that required medical treatment.

Decena and Villones testified on their own behalf and presented Luzviminda Malabanan and Sgt. Nicolas M. Roxas as witnesses. Decena recounted that on September 24, 1990, at about 2:00 P.M., he was driving a passenger jeepney bound for Candelaria, Quezon. On board, the jeepney was about fifteen passengers, including private respondents Gloria and Lotis Brazal. Upon reaching Sampaloc, Sariaya, Quezon, a Supreme Transliner bus coming from the opposite direction, suddenly appeared on a curved portion of the road and overtook another jeepney, which it was then following. Thereafter, the bus collided with Decena's jeepney.

Petitioners presented Novencio Flores and Moises Alvarez, the Manager of Supreme Transliner. Both testified that the passenger jeepney was running very fast when the accident occurred. On the third-party complaint, petitioners showed that they already submitted the required documents for insurance claim and that Country Bankers Insurance Company promised to settle the claim, but did not.

On October 28, 1992, the trial court rendered its judgment, the dispositive portion of which reads:

> WHEREFORE, finding that the plaintiffs [have] established by preponderance of evidence the allegations of the complaint, judgment is hereby rendered:
>
> ON THE COMPLAINT:

> - Ordering the defendants Felipe Sia, as registered owner of the Supreme Bus, and Novencio Flores primarily liable for the damages of the plaintiffs and directing them to jointly and severally pay plaintiffs the following:
>
> - The amount of TWENTY FIVE THOUSAND PESOS (P25,000.00) by way of actual damages;
>
> - The amount of P10,000.00 by way of moral damages;
>
> - The amount of P5,000.00 as attorney's fees.
>
> On the third-party complaint, judgment is hereby rendered ordering the third-party defendant to pay the third-party plaintiffs any and all amounts that they have paid to the plaintiffs by reason of this decision provided it does not exceed P50,000.00.
>
> Third-party defendant is also ordered to pay the costs.
>
> SO ORDERED.[3]

The trial court declared that Flores was negligent in operating the bus, while Sia failed to exercise the diligence of a good father of a family in the choice, supervision and direction of his employees.

On the third-party complaint, the trial court found that Supreme Transliner had insured the bus with Country Bankers, paid the premiums for the period covering the accident, and made an insurance claim by notifying the insurer and submitting the required documents. However, until the filing of the complaint, Country Bankers had not acted upon Supreme Transliner's claim. The trial court ordered Country Bankers to pay third-party plaintiffs an amount not exceeding P50,000.

Petitioners appealed to the Court of Appeals where they maintained that the trial court erred in: (a) pronouncing them liable to private respondents; (b) awarding the amount of P25,000 as actual damages; and (c) finding Sia solidarily liable with driver Flores. Country Bankers Insurance Company filed on July 5, 1994, a manifestation and motion wherein it stated that it had already settled its maximum liability under the policy, and therefore prayed for its exclusion from the case.

On September 21, 1995, the Court of Appeals promulgated its decision, decreeing as follows:

> WHEREFORE, the appealed judgment is AFFIRMED subject to the Manifestation and Motion filed by third-party defendant as discussed in the text of herein decision.
>
> Costs against defendant-third party appellant Felipe Sia and defendant-appellant Novencio C. Flores.
>
> SO ORDERED.[4]

The Court of Appeals found that there was competent and preponderant evidence which showed that driver Novencio Flores' negligence was the proximate cause of the mishap and that Felipe Sia failed to perform the required degree of care in the selection and supervision of the bus driver. It also found that the actual damages representing the medical expenses incurred by private respondents were properly supported by receipts.

Petitioners filed a motion for reconsideration but this was denied. Hence, this petition, where petitioners raise the following issues:

> I
>
> ARE EVIDENCES (SIC) IN THE RECORDS OF THE CASE BUT NOT OFFERED BY A PARTY LITIGANT BE CONSIDERED IN THE LATTER'S FAVOR?
>
> II

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ARE EVIDENCES (SIC) ADDUCED BY A CO-DEFENDANT BE CONSIDERED AS EVIDENCES (SIC) OF THE PLAINTIFF AS AGAINST THE OTHER DEFENDANT?[5]

Petitioners aver that the Court of Appeals erred in affirming the trial court's decision which was mainly based on the evidence proffered by their co-defendants Decena and Villones. Petitioners contend that this evidence, which proved their liability for quasi-delict, could not be appreciated against them because the same was not adopted, much less offered in evidence by private respondents. Neither did Decena and Villones file a cross-claim against them. Consequently, in accordance with Section 1,[6] Rule 131 and Sections 34[7] and 35[8], Rule 132 of the Rules of Court, said evidence was placed beyond the court's consideration, hence they could not be held liable on the basis thereof.

Private respondents contend that Philippine courts are not only courts of law but of equity and justice as well. The Court of Appeals, being a court of record, has to appreciate all the facts and evidence before it in determining the parties' rights and liabilities regardless of who among the litigants actually presented the same. Further, they point out that the issue is being raised for the first time, thus it is highly improper to nullify or reverse the Court of Appeals' decision based solely on a completely new and foreign ground.

For our resolution are the following issues: (a) Who has the burden of proving herein petitioners' liability? (b) May the evidence presented by Decena and Villones be considered in determining preponderance of evidence against herein petitioners?

Burden of proof is the duty of a party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases.[9] The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense - i.e. an "avoidance" of the claim.[10]

In this case, both private respondents as well as the jeepney driver Reynaldo Decena and its owner Marcelino Villones claim that the bus driver, Novencio Flores, was liable for negligently operating the bus. For private respondents, the claim constitutes their cause of action against petitioners which said private respondents must prove by preponderance of evidence. At the same time, the same claim is a matter of affirmative defense on the part of Decena and Villones who are impleaded as co-defendants of petitioners. Therefore, both private respondents as well as the said co-defendants had the burden of proving petitioners' negligence by the quantum of proof required to establish the latter's liability, i.e. by preponderance of evidence.

On the second issue, we rule in the affirmative. The evidence presented by the jeepney owner and its driver, Villones and Decena, forms part of the totality of the evidence concerning the negligence committed by petitioners as defendants in quasi-delict case. Preponderance of evidence is determined by considering all the facts and circumstances of the case, culled from the evidence, regardless of who actually presented it.[11] Petitioners' liability were proved by the evidence presented by Decena and Villones at the trial, taken together with the evidence presented by the victims of the collision, namely herein private respondents Gloria and Lotis Brazal.

We find petitioners' reliance on Sections 34 and 35 of Rule 132 of the Rules of Court misplaced. Petitioners cited these rules to support their allegation that evidence by Decena and Villones should not be considered in private respondents' favor since the latter did not adopt much less offer them in evidence. Nothing in Section 34 requires that the evidence be offered or adopted by a specific party before it could be considered in his favor. It is enough that the evidence is offered for the court's consideration. We find, moreover, no pertinence in petitioners' invocation of Rule 35, on when to make an offer, except to indicate to us petitioners' reliance on inapplicable technicalities that betray the lack of merit of their petition.

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WHEREFORE, the instant petition is DENIED. The decision and resolution dated September 21, 1995 and June 18, 1996, respectively, of the Court of Appeals are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 24-39.

[2] Id. at 41

[3] Records, pp. 128-129.

[4] Rollo, p. 38.

[5] Id. at 13.

[6] Section 1. Burden of proof. - Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[7] Section 34. Offer to evidence. - the court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[8] Section 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

[9] See note 6.

[10] Paras, Rules of Court 448 (3rd ed. 1996).

[11] Sec. 1, Rule 133, Revised Rules on Evidence. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

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