

**ALFREDO MALLARI SR. AND ALFREDO MALLARI JR., PETITIONERS,
VS. COURT OF APPEALS AND BULLETIN PUBLISHING CORPORATION,
RESPONDENTS.**

G.R. No. 128607. January 31, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ALFREDO MALLARI SR. and ALFREDO MALLARI JR. in this petition for review on certiorari seek to set aside the Decision of the Court of Appeals[1] which reversed the court a quo and adjudged petitioners to be liable for damages due to negligence as a common carrier resulting in the death of a passenger.

On 14 October 1987, at about 5:00 o'clock in the morning, the passenger jeepney driven by petitioner Alfredo Mallari Jr. and owned by his co-petitioner Alfredo Mallari Sr. collided with the delivery van of respondent Bulletin Publishing Corp. (BULLETIN, for brevity) along the National Highway in Barangay San Pablo, Dinalupihan, Bataan. Petitioner Mallari Jr. testified that he went to the left lane of the highway and overtook a Fiera which had stopped on the right lane. Before he passed by the Fiera, he saw the van of respondent BULLETIN coming from the opposite direction. It was driven by one Felix Angeles. The sketch of the accident showed that the collision occurred after Mallari Jr. overtook the Fiera while negotiating a curve in the highway. The points of collision were the left rear portion of the passenger jeepney and the left front side of the delivery van of BULLETIN. The two (2) right wheels of the delivery van were on the right shoulder of the road and pieces of debris from the accident were found scattered along the shoulder of the road up to a certain portion of the lane travelled by the passenger jeepney. The impact caused the jeepney to turn around and fall on its left side resulting in injuries to its passengers one of whom was Israel Reyes who eventually died due to the gravity of his injuries.

On 16 December 1987 Claudia G. Reyes, the widow of Israel M. Reyes, filed a complaint for damages with the Regional Trial Court of Olongapo City against Alfredo Mallari Sr. and Alfredo Mallari Jr., and also against BULLETIN, its driver Felix Angeles, and the N.V. Netherlands Insurance Company. The complaint alleged that the collision which resulted in the death of Israel Reyes was caused by the fault and negligence of both drivers of the passenger jeepney and the Bulletin Isuzu delivery van. The complaint also prayed that the defendants be ordered jointly and severally to pay plaintiff P1,006,777.40 in compensatory damages, P40,000.00 for hospital and medical expenses, P18,270.00 for burial expenses plus such amounts as may be fixed by the trial court for exemplary damages and attorney's fees.

The trial court found that the proximate cause of the collision was the negligence of Felix Angeles, driver of the Bulletin delivery van, considering the fact that the left front portion of the delivery truck driven by Felix Angeles hit and bumped the left rear portion of the passenger jeepney driven by Alfredo Mallari Jr. Hence, the trial court ordered BULLETIN and Felix Angeles to pay jointly and severally Claudia G. Reyes, widow of the deceased victim, the sums of P42,106.93 for medical expenses; P8,600.00 for funeral and burial expenses; P1,006,777.40 for loss of earning capacity; P5,000.00 for moral damages and P10,000.00 for attorney's fees. The trial court also

ordered N.V. Netherlands Insurance Company to indemnify Claudia G. Reyes P12,000.00 as death indemnity and P2,500.00 for funeral expenses which when paid should be deducted from the liabilities of respondent BULLETIN and its driver Felix Angeles to the plaintiff. It also dismissed the complaint against the other defendants Alfredo Mallari Sr. and Alfredo Mallari Jr.

On appeal the Court of Appeals modified the decision of the trial court and found no negligence on the part of Angeles and consequently of his employer, respondent BULLETIN. Instead, the appellate court ruled that the collision was caused by the sole negligence of petitioner Alfredo Mallari Jr. who admitted that immediately before the collision and after he rounded a curve on the highway, he overtook a Fiera which had stopped on his lane and that he had seen the van driven by Angeles before overtaking the Fiera. The Court of Appeals ordered petitioners Mallari Jr. and Mallari Sr. to compensate Claudia G. Reyes P1,006,777.50 for loss of earning capacity, P50,000.00 as indemnity for death and P10,000.00 for attorney's fees. It absolved from any liability respondent BULLETIN, Felix Angeles and N.V. Netherlands Insurance Company. Hence this petition.

Petitioners contend that there is no evidence to show that petitioner Mallari Jr. overtook a vehicle at a curve on the road at the time of the accident and that the testimony of Angeles on the overtaking made by Mallari Jr. was not credible and unreliable. Petitioner also submits that the trial court was in a better position than the Court of Appeals to assess the evidence and observe the witnesses as well as determine their credibility; hence, its finding that the proximate cause of the collision was the negligence of respondent Angeles, driver of the delivery van owned by respondent BULLETIN, should be given more weight and consideration.

We cannot sustain petitioners. Contrary to their allegation that there was no evidence whatsoever that petitioner Mallari Jr. overtook a vehicle at a curve on the road at the time of or before the accident, the same petitioner himself testified that such fact indeed did occur -

Q:

And what was that accident all about?

A:

Well, what happened, sir, is that at about that time 5:00 o'clock in that morning of October 14 while I was negotiating on the highway at San Pablo, Dinalupihan, Bataan, I was then following a blue Ford Fierra and my distance behind was about twenty (20) feet and then I passed that blue Ford Fierra. I overtook and when I was almost on the right lane of the highway towards Olongapo City there was an oncoming delivery van of the Bulletin Publishing Corporation which bumped the left rear portion of the jeepney which I was driving and as a result of which the jeepney x x x turned around and fell on its left side and as a result of which some of my passengers including me were injured, sir x x x x

Q:

Before you overtook the Ford Fierra jeepney did you look x x x whether there was any vehicle coming towards you?

A:

Yes, sir.

Q:

Did you see the Bulletin van or the Press van coming towards you?

A:

Yes, sir.

Q:

At the moment the Ford Fierra xxx stop(ped) and in overtaking the Fierra, did you not have an option to stop and not to overtake the Ford Fierra?

A:

Well, at the time when the Ford Fierra stopped in front of me I slowed down with the intention of applying the brake, however, when I saw the oncoming vehicle which is the Press van is very far x x x which is 100 feet distance, x x x it is sufficient to overtake the Ford Fierra so I overt(ook) it x x x x

Q:

You said that you took into consideration the speed of the oncoming Press van but you also could not estimate the speed of the press van because it was dark at that time, which of these statements are true?

A:

What I wanted to say, I took into consideration the speed of the oncoming vehicle, the Press van, although at the moment I could not estimate the speed of the oncoming vehicle x x x x[2]

The Court of Appeals correctly found, based on the sketch and spot report of the police authorities which were not disputed by petitioners, that the collision occurred immediately after petitioner Mallari Jr. overtook a vehicle in front of it while traversing a curve on the highway.[3] This act of overtaking was in clear violation of Sec. 41, pars. (a) and (b), of RA 4136 as amended, otherwise known as The Land Transportation and Traffic Code which provides:

Sec. 41. Restrictions on overtaking and passing. - (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

(b)

The driver of a vehicle shall not overtake or pass another vehicle proceeding in the same direction when approaching the crest of a grade, nor upon a curve in the highway, where the driver's view along the highway is obstructed within a distance of five hundred feet ahead except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle:

Provided That on a highway, within a business or residential district, having two or more lanes for movement of traffic in one direction, the driver of a vehicle may overtake or pass another vehicle on the right.

The rule is settled that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and not to proceed if he cannot do so in safety.[4] When a motor vehicle is approaching or rounding a curve, there is special necessity for keeping to the right side of the road and the driver does not have the right to drive on the left hand side relying upon having time to turn to the right if a car approaching from the opposite direction comes into view.[5]

In the instant case, by his own admission, petitioner Mallari Jr. already saw that the BULLETIN delivery van was coming from the opposite direction and failing to consider the speed thereof since it was still dark at 5:00 o'clock in the morning mindlessly occupied the left lane and overtook two (2) vehicles in front of it at a curve in the highway. Clearly, the proximate cause of the collision resulting in the death of Israel Reyes, a passenger of the

jeepney, was the sole negligence of the driver of the passenger jeepney, petitioner Alfredo Mallari Jr., who recklessly operated and drove his jeepney in a lane where overtaking was not allowed by traffic rules. Under Art. 2185 of the Civil Code, unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap he was violating a traffic regulation. As found by the appellate court, petitioners failed to present satisfactory evidence to overcome this legal presumption.

The negligence and recklessness of the driver of the passenger jeepney is binding against petitioner Mallari Sr., who admittedly was the owner of the passenger jeepney engaged as a common carrier, considering the fact that in an action based on contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible for the payment of damages sought by the passenger. Under Art. 1755 of the Civil Code, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard for all the circumstances. Moreover, under Art. 1756 of the Civil Code, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. Further, pursuant to Art. 1759 of the same Code, it is liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees. This liability of the common carrier does not cease upon proof that it exercised all the diligence of a good father of a family in the selection of its employees. Clearly, by the contract of carriage, the carrier jeepney owned by Mallari Sr. assumed the express obligation to transport the passengers to their destination safely and to observe extraordinary diligence with due regard for all the circumstances, and any injury or death that might be suffered by its passengers is right away attributable to the fault or negligence of the carrier.

The monetary award ordered by the appellate court to be paid by petitioners to the widow of the deceased passenger Israel M. Reyes of P1,006,777.50 for loss of earning capacity, P50,000.00 as civil indemnity for death, and P10,000.00 for attorney's fees, all of which were not disputed by petitioners, is a factual matter binding and conclusive upon this Court.

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals dated 20 September 1995 reversing the decision of the trial court being in accord with law and evidence is AFFIRMED. Consequently, petitioners are ordered jointly and severally to pay Claudia G. Reyes P1,006,777.50 for loss of earning capacity, P50,000.00 as civil indemnity for death, and P10,000.00 for attorney's fees. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, Buena and De Leon, Jr., concur.

[1] Decision penned by Associate Justice Eubola Verzola, concurred in by Associate Justices Cesar D. Francisco and Oswaldo D. Agcaoili.

[2] TSN, 9 February 1989, pp. 13-14, 28-32.

[3] Records, pp. 101-102.

[4] BLTB Co. v. IAC, G.R. Nos. 74387-90, 14 November 1988, 167 SCRA 379, citing *People v. Enriquez*, 40 O.G. No. 5.

[5] *Ibid.*

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