WILLIAM TIU, DOING BUSINESS UNDER THE NAME AND STYLE OF "D' ROUGH RIDERS," AND VIRGILIO TE LAS PIÑAS PETITIONERS, VS. PEDRO A. ARRIESGADO, BENJAMIN CONDOR, SERGIO PEDRANO AND PH...

G.R. No. 138060. September 01, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court from the Decision[1] of the Court of Appeals in CA-G.R. CV No. 54354 affirming with modification the Decision[2] of the Regional Trial Court, 7th Judicial Region, Cebu City, Branch 20, in Civil Case No. CEB-5963 for breach of contract of carriage, damages and attorney's fees, and the Resolution dated February 26, 1999 denying the motion for reconsideration thereof.

The following facts are undisputed:

At about 10:00 p.m. of March 15, 1987, the cargo truck marked "Condor Hollow Blocks and General Merchandise" bearing plate number GBP-675 was loaded with firewood in Bogo, Cebu and left for Cebu City. Upon reaching Sitio Aggies, Poblacion, Compostela, Cebu, just as the truck passed over a bridge, one of its rear tires exploded. The driver, Sergio Pedrano, then parked along the right side of the national highway and removed the damaged tire to have it vulcanized at a nearby shop, about 700 meters away.[3] Pedrano left his helper, Jose Mitante, Jr. to keep watch over the stalled vehicle, and instructed the latter to place a spare tire six fathoms away[4] behind the stalled truck to serve as a warning for oncoming vehicles. The truck's tail lights were also left on. It was about 12:00 a.m., March 16, 1987.

At about 4:45 a.m., D' Rough Riders passenger bus with plate number PBP-724 driven by Virgilio Te Laspiñas was cruising along the national highway of Sitio Aggies, Poblacion, Compostela, Cebu. The passenger bus was also bound for Cebu City, and had come from Maya, Daanbantayan, Cebu. Among its passengers were the Spouses Pedro A. Arriesgado and Felisa Pepito Arriesgado, who were seated at the right side of the bus, about three (3) or four (4) places from the front seat.

As the bus was approaching the bridge, Laspiñas saw the stalled truck, which was then about 25 meters away.[5] He applied the breaks and tried to swerve to the left to avoid hitting the truck. But it was too late; the bus rammed into the truck's left rear. The impact damaged the right side of the bus and left several passengers injured. Pedro Arriesgado lost consciousness and suffered a fracture in his right colles.[6] His wife, Felisa, was brought to the Danao City Hospital. She was later transferred to the Southern Island Medical Center where she died shortly thereafter.[7]

Respondent Pedro A. Arriesgado then filed a complaint for breach of contract of carriage, damages and attorney's fees before the Regional Trial Court of Cebu City, Branch 20, against the petitioners, D' Rough Riders bus operator William Tiu and his driver, Virgilio Te Laspiñas on May 27, 1987. The respondent alleged that the

passenger bus in question was cruising at a fast and high speed along the national road, and that petitioner Laspiñas did not take precautionary measures to avoid the accident.[8] Thus:

> - That the accident resulted to the death of the plaintiff's wife, Felisa Pepito Arriesgado, as evidenced by a Certificate of Death, a xerox copy of which is hereto attached as integral part hereof and marked as ANNEX – "A", and physical injuries to several of its passengers, including plaintiff himself who suffered a "COLLES FRACTURE RIGHT," per Medical Certificate, a xerox copy of which is hereto attached as integral part hereof and marked as ANNEX – "B" hereof.
>
> - That due to the reckless and imprudent driving by defendant Virgilio Te Laspiñas of the said Rough Riders passenger bus, plaintiff and his wife, Felisa Pepito Arriesgado, failed to safely reach their destination which was Cebu City, the proximate cause of which was defendant-driver's failure to observe utmost diligence required of a very cautious person under all circumstances.
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> - That defendant William Tiu, being the owner and operator of the said Rough Riders passenger bus which figured in the said accident, wherein plaintiff and his wife were riding at the time of the accident, is therefore directly liable for the breach of contract of carriage for his failure to transport plaintiff and his wife safely to their place of destination which was Cebu City, and which failure in his obligation to transport safely his passengers was due to and in consequence of his failure to exercise the diligence of a good father of the family in the selection and supervision of his employees, particularly defendant-driver Virgilio Te Laspiñas.[9]

The respondent prayed that judgment be rendered in his favor and that the petitioners be condemned to pay the following damages:

> 1). To pay to plaintiff, jointly and severally, the amount of P30,000.00 for the death and untimely demise of plaintiff's wife, Felisa Pepito Arriesgado;
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> 2). To pay to plaintiff, jointly and severally, the amount of P38,441.50, representing actual expenses incurred by the plaintiff in connection with the death/burial of plaintiff's wife;
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> 3). To pay to plaintiff, jointly and severally, the amount of P1,113.80, representing medical/hospitalization expenses incurred by plaintiff for the injuries sustained by him;
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> 4). To pay to plaintiff, jointly and severally, the amount of P50,000.00 for moral damages;
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> 5). To pay to plaintiff, jointly and severally, the amount of P50,000.00 by way of exemplary damages;
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> 6). To pay to plaintiff, jointly and severally, the amount of P20,000.00 for attorney's fees;
>
> 7). To pay to plaintiff, jointly and severally, the amount of P5,000.00 for litigation expenses.
>
> PLAINTIFF FURTHER PRAYS FOR SUCH OTHER RELIEFS AND REMEDIES IN LAW AND EQUITY.[10]

The petitioners, for their part, filed a Third-Party Complaint[11] on August 21, 1987 against the following: respondent Philippine Phoenix Surety and Insurance, Inc. (PPSII), petitioner Tiu's insurer; respondent Benjamin Condor, the registered owner of the cargo truck; and respondent Sergio Pedrano, the driver of the truck. They alleged that petitioner Laspiñas was negotiating the uphill climb along the national highway of Sitio Aggies, Poblacion, Compostela, in a moderate and normal speed. It was further alleged that the truck was parked in a slanted manner, its rear portion almost in the middle of the highway, and that no early warning device was displayed. Petitioner Laspiñas promptly applied the brakes and swerved to the left to avoid hitting the truck head-on, but despite his efforts to avoid damage to property and physical injuries on the passengers, the right side portion of the bus hit the cargo truck's left rear. The petitioners further alleged, thus:

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> - That the cargo truck mentioned in the aforequoted paragraph is owned and registered in the name of the third-party defendant Benjamin Condor and was left unattended by its driver Sergio Pedrano, one of the third-party defendants, at the time of the incident;
>
> - That third-party defendant Sergio Pedrano, as driver of the cargo truck with marked (sic) "Condor Hollow Blocks & General Merchandise," with Plate No. GBP-675 which was recklessly and imprudently parked along the national highway of Compostela, Cebu during the vehicular accident in question, and third-party defendant Benjamin Condor, as the registered owner of the cargo truck who failed to exercise due diligence in the selection and supervision of third-party defendant Sergio Pedrano, are jointly and severally liable to the third-party plaintiffs for whatever liability that may be adjudged against said third-party plaintiffs or are directly liable of (sic) the alleged death of plaintiff's wife;
>
> - That in addition to all that are stated above and in the answer which are intended to show reckless imprudence on the part of the third-party defendants, the third-party plaintiffs hereby declare that during the vehicular accident in question, third-party defendant was clearly violating Section 34, par. (g) of the Land Transportation and Traffic Code...
>
> ...
>
> - That the aforesaid passenger bus, owned and operated by third-party plaintiff William Tiu, is covered by a common carrier liability insurance with Certificate of Cover No. 054940 issued by Philippine Phoenix Surety and Insurance, Inc., Cebu City Branch, in favor of third-party plaintiff William Tiu which covers the period from July 22, 1986 to July 22, 1987 and that the said insurance coverage was valid, binding and subsisting during the time of the aforementioned incident (Annex "A" as part hereof);
>
> - That after the aforesaid alleged incident, third-party plaintiff notified third-party defendant Philippine Phoenix Surety and Insurance, Inc., of the alleged incident hereto mentioned, but to no avail;
>
> - That granting, et arguendo et arguendi, if herein third-party plaintiffs will be adversely adjudged, they stand to pay damages sought by the plaintiff and therefore could also look up to the Philippine Phoenix Surety and Insurance, Inc., for contribution, indemnification and/or reimbursement of any liability or obligation that they might [be] adjudged per insurance coverage duly entered into by and between third-party plaintiff William Tiu and third-party defendant Philippine Phoenix Surety and Insurance, Inc.;...[12]

The respondent PPSII, for its part, admitted that it had an existing contract with petitioner Tiu, but averred that it had already attended to and settled the claims of those who were injured during the incident.[13] It could not accede to the claim of respondent Arriesgado, as such claim was way beyond the scheduled indemnity as contained in the contract of insurance. [14]

After the parties presented their respective evidence, the trial court ruled in favor of respondent Arriesgado. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff as against defendant William Tiu ordering the latter to pay the plaintiff the following amounts:
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> 1 - The sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages;
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> 2 - The sum of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages;
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> 3 - The sum of THIRTY-EIGHT THOUSAND FOUR HUNDRED FORTY-ONE PESOS (P38,441.00) as actual damages;
>
> 4 - The sum of TWENTY THOUSAND PESOS (P20,000.00) as attorney's fees;
>
> 5 - The sum of FIVE THOUSAND PESOS (P5,000.00) as costs of suit;

SO ORDERED.[15]

According to the trial court, there was no dispute that petitioner William Tiu was engaged in business as a common carrier, in view of his admission that D' Rough Rider passenger bus which figured in the accident was owned by him; that he had been engaged in the transportation business for 25 years with a sole proprietorship; and that he owned 34 buses. The trial court ruled that if petitioner Laspiñas had not been driving at a fast pace, he could have easily swerved to the left to avoid hitting the truck, thus, averting the unfortunate incident. It then concluded that petitioner Laspiñas was negligent.

The trial court also ruled that the absence of an early warning device near the place where the truck was parked was not sufficient to impute negligence on the part of respondent Pedrano, since the tail lights of the truck were fully on, and the vicinity was well lighted by street lamps.[16] It also found that the testimony of petitioner Tiu, that he based the selection of his driver Laspiñas on efficiency and in-service training, and that the latter had been so far an efficient and good driver for the past six years of his employment, was insufficient to prove that he observed the diligence of a good father of a family in the selection and supervision of his employees.

After the petitioner's motion for reconsideration of the said decision was denied, the petitioners elevated the case to the Court of Appeals on the following issues:

- WHETHER THIRD PARTY DEFENDANT SERGIO PEDRANO WAS RECKLESS AND IMPRUDENT WHEN HE PARKED THE CARGO TRUCK IN AN OBLIQUE MANNER;

- WHETHER THE THIRD PARTY DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE DIRECTLY TO PLAINTIFF-APPELLEE OR TO DEFENDANTS-APPELLANTS FOR WHATEVER LIABILITY THAT MAY BE ADJUDGED TO THE SAID DEFENDANTS-APPELLANTS;

- WHETHER DEFENDANT-APPELLANT VIRGILIO TE LASPIÑAS WAS GUILTY OF GROSS NEGLIGENCE;

- WHETHER DEFENDANT-APPELLANT WILLIAM TIU HAD EXERCISED THE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF HIS DRIVERS;

- GRANTING FOR THE SAKE OF ARGUMENT THAT DEFENDANT-APPELLANT WILLIAM TIU IS LIABLE TO PLAINTIFF-APPELLEE, WHETHER THERE IS LEGAL AND FACTUAL BASIS IN AWARDING EXCESSIVE MORAL DAMAGES, EX[E]MPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO PLAINTIFF-APPELLEE;

- WHETHER THIRD PARTY DEFENDANT PHILIPPINE PHOENIX SURETY AND INSURANCE, INC. IS LIABLE TO DEFENDANT- APPELLANT WILLIAM TIU.[17]

The appellate court rendered judgment affirming the trial court's decision with the modification that the awards for moral and exemplary damages were reduced to P25,000. The dispositive portion reads:

WHEREFORE, the appealed Decision dated November 6, 1995 is hereby MODIFIED such that the awards for moral and exemplary damages are each reduced to P25,000.00 or a total of P50,000.00 for both. The judgment is AFFIRMED in all other respects.

SO ORDERED.[18]

According to the appellate court, the action of respondent Arriesgado was based not on quasi-delict but on breach of contract of carriage. As a common carrier, it was incumbent upon petitioner Tiu to prove that extraordinary diligence was observed in ensuring the safety of passengers during transportation. Since the latter failed to do so, he should be held liable for respondent Arriesgado's claim. The CA also ruled that no evidence was presented

against the respondent PPSII, and as such, it could not be held liable for respondent Arriesgado's claim, nor for contribution, indemnification and/or reimbursement in case the petitioners were adjudged liable.

The petitioners now come to this Court and ascribe the following errors committed by the appellate court:

> - THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING RESPONDENTS BENJAMIN CONDOR AND SERGIO PEDRANO GUILTY OF NEGLIGENCE AND HENCE, LIABLE TO RESPONDENT PEDRO A. ARRIESGADO OR TO PETITIONERS FOR WHATEVER LIABILITY THAT MAY BE ADJUDGED AGAINST THEM.
>
> - THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONERS GUILTY OF NEGLIGENCE AND HENCE, LIABLE TO RESPONDENT PEDRO A. ARRIESGADO.
>
> - THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONER WILLIAM TIU LIABLE FOR EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES.
>
> - THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING RESPONDENT PHILIPPINE PHOENIX SURETY AND INSURANCE, INC. LIABLE TO RESPONDENT PEDRO A. ARRIESGADO OR TO PETITIONER WILLIAM TIU.[19]

According to the petitioners, the appellate court erred in failing to appreciate the absence of an early warning device and/or built-in reflectors at the front and back of the cargo truck, in clear violation of Section 34, par. (g) of the Land Transportation and Traffic Code. They aver that such violation is only a proof of respondent Pedrano's negligence, as provided under Article 2185 of the New Civil Code. They also question the appellate court's failure to take into account that the truck was parked in an oblique manner, its rear portion almost at the center of the road. As such, the proximate cause of the incident was the gross recklessness and imprudence of respondent Pedrano, creating the presumption of negligence on the part of respondent Condor in supervising his employees, which presumption was not rebutted. The petitioners then contend that respondents Condor and Pedrano should be held jointly and severally liable to respondent Arriesgado for the payment of the latter's claim.

The petitioners, likewise, aver that expert evidence should have been presented to prove that petitioner Laspiñas was driving at a very fast speed, and that the CA could not reach such conclusion by merely considering the damages on the cargo truck. It was also pointed out that petitioner Tiu presented evidence that he had exercised the diligence of a good father of a family in the selection and supervision of his drivers.

The petitioners further allege that there is no legal and factual basis to require petitioner Tiu to pay exemplary damages as no evidence was presented to show that the latter acted in a fraudulent, reckless and oppressive manner, or that he had an active participation in the negligent act of petitioner Laspiñas.

Finally, the petitioners contend that respondent PPSII admitted in its answer that while it had attended to and settled the claims of the other injured passengers, respondent Arriesgado's claim remained unsettled as it was beyond the scheduled indemnity under the insurance contract. The petitioners argue that said respondent PPSII should have settled the said claim in accordance with the scheduled indemnity instead of just denying the same.

On the other hand, respondent Arriesgado argues that two of the issues raised by the petitioners involved questions of fact, not reviewable by the Supreme Court: the finding of negligence on the part of the petitioners and their liability to him; and the award of exemplary damages, attorney's fees and litigation expenses in his favor. Invoking the principle of equity and justice, respondent Arriesgado pointed out that if there was an error to be reviewed in the CA decision, it should be geared towards the restoration of the moral and exemplary damages to P50,000 each, or a total of P100,000 which was reduced by the Court of Appeals to P25,000 each, or a total of only P50,000.

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Respondent Arriesgado also alleged that respondents Condor and Pedrano, and respondent Phoenix Surety, are parties with whom he had no contract of carriage, and had no cause of action against. It was pointed out that only the petitioners needed to be sued, as driver and operator of the ill-fated bus, on account of their failure to bring the Arriesgado Spouses to their place of destination as agreed upon in the contract of carriage, using the utmost diligence of very cautious persons with due regard for all circumstances.

Respondents Condor and Pedrano point out that, as correctly ruled by the Court of Appeals, the proximate cause of the unfortunate incident was the fast speed at which petitioner Laspiñas was driving the bus owned by petitioner Tiu. According to the respondents, the allegation that the truck was not equipped with an early warning device could not in any way have prevented the incident from happening. It was also pointed out that respondent Condor had always exercised the due diligence required in the selection and supervision of his employees, and that he was not a party to the contract of carriage between the petitioners and respondent Arriesgado.

Respondent PPSII, for its part, alleges that contrary to the allegation of petitioner Tiu, it settled all the claims of those injured in accordance with the insurance contract. It further avers that it did not deny respondent Arriesgado's claim, and emphasizes that its liability should be within the scheduled limits of indemnity under the said contract. The respondent concludes that while it is true that insurance contracts are contracts of indemnity, the measure of the insurer's liability is determined by the insured's compliance with the terms thereof.

The Court's Ruling

At the outset, it must be stressed that this Court is not a trier of facts.[20] Factual findings of the Court of Appeals are final and may not be reviewed on appeal by this Court, except when the lower court and the CA arrived at diverse factual findings.[21] The petitioners in this case assail the finding of both the trial and the appellate courts that petitioner Laspiñas was driving at a very fast speed before the bus owned by petitioner Tiu collided with respondent Condor's stalled truck. This is clearly one of fact, not reviewable by the Court in a petition for review under Rule 45.[22]

On this ground alone, the petition is destined to fail.

However, considering that novel questions of law are likewise involved, the Court resolves to examine and rule on the merits of the case.

Petitioner Laspiñas
Was negligent in driving
The Ill-fated bus

In his testimony before the trial court, petitioner Laspiñas claimed that he was traversing the two-lane road at Compostela, Cebu at a speed of only forty (40) to fifty (50) kilometers per hour before the incident occurred.[23] He also admitted that he saw the truck which was parked in an "oblique position" at about 25 meters before impact,[24] and tried to avoid hitting it by swerving to the left. However, even in the absence of expert evidence, the damage sustained by the truck[25] itself supports the finding of both the trial court and the appellate court, that the D' Rough Rider bus driven by petitioner Laspiñas was traveling at a fast pace. Since he saw the stalled truck at a distance of 25 meters, petitioner Laspiñas had more than enough time to swerve to his left to avoid hitting it; that is, if the speed of the bus was only 40 to 50 kilometers per hour as he claimed. As found by the Court of Appeals, it is easier to believe that petitioner Laspiñas was driving at a very fast speed, since at 4:45 a.m., the hour of the accident, there were no oncoming vehicles at the opposite direction. Petitioner Laspiñas could have swerved to the left lane with proper clearance, and, thus, could have avoided the truck.[26] Instinct, at the very least, would have prompted him to apply the breaks to avert the impending disaster which he must have foreseen

when he caught sight of the stalled truck. As we had occasion to reiterate:

> A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful and prudent, if not from instinct, then through fear of recurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise, his own person, rights and property, and those of his fellow beings, would ever be exposed to all manner of danger and injury.[27]

We agree with the following findings of the trial court, which were affirmed by the CA on appeal:

> A close study and evaluation of the testimonies and the documentary proofs submitted by the parties which have direct bearing on the issue of negligence, this Court as shown by preponderance of evidence that defendant Virgilio Te Laspiñas failed to observe extraordinary diligence as a driver of the common carrier in this case. It is quite hard to accept his version of the incident that he did not see at a reasonable distance ahead the cargo truck that was parked when the Rough Rider [Bus] just came out of the bridge which is on an (sic) [more] elevated position than the place where the cargo truck was parked. With its headlights fully on, defendant driver of the Rough Rider was in a vantage position to see the cargo truck ahead which was parked and he could just easily have avoided hitting and bumping the same by maneuvering to the left without hitting the said cargo truck. Besides, it is (sic) shown that there was still much room or space for the Rough Rider to pass at the left lane of the said national highway even if the cargo truck had occupied the entire right lane thereof. It is not true that if the Rough Rider would proceed to pass through the left lane it would fall into a canal considering that there was much space for it to pass without hitting and bumping the cargo truck at the left lane of said national highway. The records, further, showed that there was no incoming vehicle at the opposite lane of the national highway which would have prevented the Rough Rider from not swerving to its left in order to avoid hitting and bumping the parked cargo truck. But the evidence showed that the Rough Rider instead of swerving to the still spacious left lane of the national highway plowed directly into the parked cargo truck hitting the latter at its rear portion; and thus, the (sic) causing damages not only to herein plaintiff but to the cargo truck as well.[28]

Indeed, petitioner Laspiñas' negligence in driving the bus is apparent in the records. By his own admission, he had just passed a bridge and was traversing the highway of Compostela, Cebu at a speed of 40 to 50 kilometers per hour before the collision occurred. The maximum speed allowed by law on a bridge is only 30 kilometers per hour.[29] And, as correctly pointed out by the trial court, petitioner Laspiñas also violated Section 35 of the Land Transportation and Traffic Code, Republic Act No. 4136, as amended:

> Sec. 35. Restriction as to speed. – (a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and or any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.[30]

Under Article 2185 of the Civil Code, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation.[31]

Petitioner Tiu failed to
Overcome the presumption
Of negligence against him as
One engaged in the business
Of common carriage

The rules which common carriers should observe as to the safety of their passengers are set forth in the Civil

Code, Articles 1733,[32] 1755[33] and 1756.[34] In this case, respondent Arriesgado and his deceased wife contracted with petitioner Tiu, as owner and operator of D' Rough Riders bus service, for transportation from Maya, Daanbantayan, Cebu, to Cebu City for the price of P18.00.[35] It is undisputed that the respondent and his wife were not safely transported to the destination agreed upon. In actions for breach of contract, only the existence of such contract, and the fact that the obligor, in this case the common carrier, failed to transport his passenger safely to his destination are the matters that need to be proved.[36] This is because under the said contract of carriage, the petitioners assumed the express obligation to transport the respondent and his wife to their destination safely and to observe extraordinary diligence with due regard for all circumstances.[37] Any injury suffered by the passengers in the course thereof is immediately attributable to the negligence of the carrier.[38] Upon the happening of the accident, the presumption of negligence at once arises, and it becomes the duty of a common carrier to prove that he observed extraordinary diligence in the care of his passengers.[39] It must be stressed that in requiring the highest possible degree of diligence from common carriers and in creating a presumption of negligence against them, the law compels them to curb the recklessness of their drivers.[40]

While evidence may be submitted to overcome such presumption of negligence, it must be shown that the carrier observed the required extraordinary diligence, which means that the carrier must show the utmost diligence of very cautious persons as far as human care and foresight can provide, or that the accident was caused by fortuitous event.[41] As correctly found by the trial court, petitioner Tiu failed to conclusively rebut such presumption. The negligence of petitioner Laspiñas as driver of the passenger bus is, thus, binding against petitioner Tiu, as the owner of the passenger bus engaged as a common carrier.[42]

The Doctrine of
Last Clear Chance
Is Inapplicable in the
Case at Bar

Contrary to the petitioner's contention, the principle of last clear chance is inapplicable in the instant case, as it only applies in a suit between the owners and drivers of two colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations, for it would be inequitable to exempt the negligent driver and its owner on the ground that the other driver was likewise guilty of negligence.[43] The common law notion of last clear chance permitted courts to grant recovery to a plaintiff who has also been negligent provided that the defendant had the last clear chance to avoid the casualty and failed to do so. Accordingly, it is difficult to see what role, if any, the common law of last clear chance doctrine has to play in a jurisdiction where the common law concept of contributory negligence as an absolute bar to recovery by the plaintiff, has itself been rejected, as it has been in Article 2179 of the Civil Code.[44]

Thus, petitioner Tiu cannot escape liability for the death of respondent Arriesgado's wife due to the negligence of petitioner Laspiñas, his employee, on this score.

Respondents Pedrano and
Condor were likewise
Negligent

In Phoenix Construction, Inc. v. Intermediate Appellate Court,[45] where therein respondent Dionisio sustained injuries when his vehicle rammed against a dump truck parked askew, the Court ruled that the improper parking of a dump truck without any warning lights or reflector devices created an unreasonable risk for anyone driving within the vicinity, and for having created such risk, the truck driver must be held responsible. In ruling against the petitioner therein, the Court elucidated, thus:

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> ... In our view, Dionisio's negligence, although later in point of time than the truck driver's negligence, and therefore closer to the accident, was not an efficient intervening or independent cause. What the petitioners describe as an "intervening cause" was no more than a foreseeable consequence of the risk created by the negligent manner in which the truck driver had parked the dump truck. In other words, the petitioner truck driver owed a duty to private respondent Dionisio and others similarly situated not to impose upon them the very risk the truck driver had created. Dionisio's negligence was not that of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the juris vinculum of liability. ...
>
> ...
>
> We hold that private respondent Dionisio's negligence was "only contributory," that the "immediate and proximate cause" of the injury remained the truck driver's "lack of due care."...[46]

In this case, both the trial and the appellate courts failed to consider that respondent Pedrano was also negligent in leaving the truck parked askew without any warning lights or reflector devices to alert oncoming vehicles, and that such failure created the presumption of negligence on the part of his employer, respondent Condor, in supervising his employees properly and adequately. As we ruled in Poblete v. Fabros:[47]

> It is such a firmly established principle, as to have virtually formed part of the law itself, that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is the presumed negligence in the selection and supervision of employee. The theory of presumed negligence, in contrast with the American doctrine of respondeat superior, where the negligence of the employee is conclusively presumed to be the negligence of the employer, is clearly deducible from the last paragraph of Article 2180 of the Civil Code which provides that the responsibility therein mentioned shall cease if the employers prove that they observed all the diligence of a good father of a family to prevent damages. ...[48]

The petitioners were correct in invoking respondent Pedrano's failure to observe Article IV, Section 34(g) of the Rep. Act No. 4136, which provides:

> (g) Lights when parked or disabled. – Appropriate parking lights or flares visible one hundred meters away shall be displayed at a corner of the vehicle whenever such vehicle is parked on highways or in places that are not well-lighted or is placed in such manner as to endanger passing traffic.

The manner in which the truck was parked clearly endangered oncoming traffic on both sides, considering that the tire blowout which stalled the truck in the first place occurred in the wee hours of the morning. The Court can only now surmise that the unfortunate incident could have been averted had respondent Condor, the owner of the truck, equipped the said vehicle with lights, flares, or, at the very least, an early warning device.[49] Hence, we cannot subscribe to respondents Condor and Pedrano's claim that they should be absolved from liability because, as found by the trial and appellate courts, the proximate cause of the collision was the fast speed at which petitioner Laspiñas drove the bus. To accept this proposition would be to come too close to wiping out the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission. Indeed, our law on quasi-delicts seeks to reduce the risks and burdens of living in society and to allocate them among its members. To accept this proposition would be to weaken the very bonds of society.[50]

The Liability of
Respondent PPSII
as Insurer

The trial court in this case did not rule on the liability of respondent PPSII, while the appellate court ruled that, as no evidence was presented against it, the insurance company is not liable.

A perusal of the records will show that when the petitioners filed the Third-Party Complaint against respondent PPSII, they failed to attach a copy of the terms of the insurance contract itself. Only Certificate of Cover No. 054940[51] issued in favor of "Mr. William Tiu, Lahug, Cebu City" signed by Cosme H. Boniel was appended to the third-party complaint. The date of issuance, July 22, 1986, the period of insurance, from July 22, 1986 to July 22, 1987, as well as the following items, were also indicated therein:

> SCHEDULED VEHICLE
>
> MODEL MAKE TYPE OF BODY COLOR BLT FILE NO.
>
> Isuzu Forward Bus blue mixed
>
> PLATE NO. PBP-724 SERIAL/CHASSIS NO. SER450-1584124 MOTOR NO. 677836 AUTHORIZED CAPACITY 50 UNLADEN WEIGHT 6Cyls. Kgs.
>
> SECTION 1/11 *LIMITS OF LIABILITY P50,000.00 PREMIUMS PAID
>
> A. THIRD PARTY LIABILITY
>
> B. PASSENGER LIABILITY Per Person P12,000.00 Per Accident P50,000 P540.00 [52]

In its Answer[53] to the Third-Party Complaint, the respondent PPSII admitted the existence of the contract of insurance, in view of its failure to specifically deny the same as required under then Section 8(a), Rule 8 of the Rules of Court,[54] which reads:

> Sec. 8. How to contest genuineness of such documents. When an action or defense is founded upon a written instrument copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for inspection of the original instrument is refused.

In fact, respondent PPSII did not dispute the existence of such contract, and admitted that it was liable thereon. It claimed, however, that it had attended to and settled the claims of those injured during the incident, and set up the following as special affirmative defenses:

> Third party defendant Philippine Phoenix Surety and Insurance, Inc. hereby reiterates and incorporates by way of reference the preceding paragraphs and further states THAT:-
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> - It has attended to the claims of Vincent Canales, Asuncion Batiancila and Neptali Palces who sustained injuries during the incident in question. In fact, it settled financially their claims per vouchers duly signed by them and they duly executed Affidavit[s] of Desistance to that effect, xerox copies of which are hereto attached as Annexes 1, 2, 3, 4, 5, and 6 respectively;
>
> - With respect to the claim of plaintiff, herein answering third party defendant through its authorized insurance adjuster attended to said claim. In fact, there were negotiations to that effect. Only that it cannot accede to the demand of said claimant considering that the claim was way beyond the scheduled indemnity as per contract entered into with third party plaintiff William Tiu and third party defendant (Philippine Phoenix Surety and Insurance, Inc.). Third party Plaintiff William Tiu knew all along the limitation as earlier stated, he being an old hand in the transportation business; [55]...

Considering the admissions made by respondent PPSII, the existence of the insurance contract and the salient terms thereof cannot be dispatched. It must be noted that after filing its answer, respondent PPSII no longer objected to the presentation of evidence by respondent Arriesgado and the insured petitioner Tiu. Even in its

Memorandum[56] before the Court, respondent PPSII admitted the existence of the contract, but averred as follows:

> Petitioner Tiu is insisting that PPSII is liable to him for contribution, indemnification and/or reimbursement. This has no basis under the contract. Under the contract, PPSII will pay all sums necessary to discharge liability of the insured subject to the limits of liability but not to exceed the limits of liability as so stated in the contract. Also, it is stated in the contract that in the event of accident involving indemnity to more than one person, the limits of liability shall not exceed the aggregate amount so specified by law to all persons to be indemnified.[57]

As can be gleaned from the Certificate of Cover, such insurance contract was issued pursuant to the Compulsory Motor Vehicle Liability Insurance Law. It was expressly provided therein that the limit of the insurer's liability for each person was P12,000, while the limit per accident was pegged at P50,000. An insurer in an indemnity contract for third party liability is directly liable to the injured party up to the extent specified in the agreement but it cannot be held solidarily liable beyond that amount.[58] The respondent PPSII could not then just deny petitioner Tiu's claim; it should have paid P12,000 for the death of Felisa Arriesgado,[59] and respondent Arriesgado's hospitalization expenses of P1,113.80, which the trial court found to have been duly supported by receipts. The total amount of the claims, even when added to that of the other injured passengers which the respondent PPSII claimed to have settled,[60] would not exceed the P50,000 limit under the insurance agreement.

Indeed, the nature of Compulsory Motor Vehicle Liability Insurance is such that it is primarily intended to provide compensation for the death or bodily injuries suffered by innocent third parties or passengers as a result of the negligent operation and use of motor vehicles. The victims and/or their dependents are assured of immediate financial assistance, regardless of the financial capacity of motor vehicle owners.[61] As the Court, speaking through Associate Justice Leonardo A. Quisumbing, explained in Government Service Insurance System v. Court of Appeals:[62]

> However, although the victim may proceed directly against the insurer for indemnity, the third party liability is only up to the extent of the insurance policy and those required by law. While it is true that where the insurance contract provides for indemnity against liability to third persons, and such persons can directly sue the insurer, the direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held liable in solidum with the insured and/or the other parties found at fault. For the liability of the insurer is based on contract; that of the insured carrier or vehicle owner is based on tort. ...
>
> Obviously, the insurer could be held liable only up to the extent of what was provided for by the contract of insurance, in accordance with the CMVLI law. At the time of the incident, the schedule of indemnities for death and bodily injuries, professional fees and other charges payable under a CMVLI coverage was provided for under the Insurance Memorandum Circular (IMC) No. 5-78 which was approved on November 10, 1978. As therein provided, the maximum indemnity for death was twelve thousand (P12,000.00) pesos per victim. The schedules for medical expenses were also provided by said IMC, specifically in paragraphs (C) to (G).[63]

Damages to be
Awarded

The trial court correctly awarded moral damages in the amount of P50,000 in favor of respondent Arriesgado. The award of exemplary damages by way of example or correction of the public good,[64] is likewise in order. As the Court ratiocinated in Kapalaran Bus Line v. Coronado:[65]

> ...While the immediate beneficiaries of the standard of extraordinary diligence are, of course, the passengers and owners of cargo carried by a common carrier, they are not the only persons that the law seeks to benefit. For if common carriers carefully observed the statutory standard of extraordinary diligence in respect of their

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> own passengers, they cannot help but simultaneously benefit pedestrians and the passengers of other vehicles who are equally entitled to the safe and convenient use of our roads and highways. The law seeks to stop and prevent the slaughter and maiming of people (whether passengers or not) on our highways and buses, the very size and power of which seem to inflame the minds of their drivers. Article 2231 of the Civil Code explicitly authorizes the imposition of exemplary damages in cases of quasi-delicts "if the defendant acted with gross negligence."...[66]

The respondent Pedro A. Arriesgado, as the surviving spouse and heir of Felisa Arriesgado, is entitled to indemnity in the amount of P50,000.00.[67]

The petitioners, as well as the respondents Benjamin Condor and Sergio Pedrano are jointly and severally liable for said amount, conformably with the following pronouncement of the Court in Fabre, Jr. vs. Court of Appeals:[68]

> The same rule of liability was applied in situations where the negligence of the driver of the bus on which plaintiff was riding concurred with the negligence of a third party who was the driver of another vehicle, thus causing an accident. In Anuran v. Buño, Batangas Laguna Tayabas Bus Co. v. Intermediate Appellate Court, and Metro Manila Transit Corporation v. Court of Appeals, the bus company, its driver, the operator of the other vehicle and the driver of the vehicle were jointly and severally held liable to the injured passenger or the latter's heirs. The basis of this allocation of liability was explained in Viluan v. Court of Appeals, thus:"Nor should it make difference that the liability of petitioner [bus owner] springs from contract while that of respondents [owner and driver of other vehicle] arises from quasi-delict. As early as 1913, we already ruled in Gutierrez vs. Gutierrez, 56 Phil. 177, that in case of injury to a passenger due to the negligence of the driver of the bus on which he was riding and of the driver of another vehicle, the drivers as well as the owners of the two vehicles are jointly and severally liable for damages. Some members of the Court, though, are of the view that under the circumstances they are liable on quasi-delict."[69]

IN LIGHT OF ALL THE FOREGOING, the petition is PARTIALLY GRANTED. The Decision of the Court of Appeals is AFFIRMED with MODIFICATIONS:

(1) Respondent Philippine Phoenix Surety and Insurance, Inc. and petitioner William Tiu are ORDERED to pay, jointly and severally, respondent Pedro A. Arriesgado the total amount of P13,113.80;

(2) The petitioners and the respondents Benjamin Condor and Sergio Pedrano are ORDERED to pay, jointly and severally, respondent Pedro A. Arriesgado P50,000.00 as indemnity; P26,441.50 as actual damages; P50,000.00 as moral damages; P50,000.00 as exemplary damages; and P20,000.00 as attorney's fees.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno J., (Chairman), on official leave.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Artemon D. Luna and Rodrigo V. Cosico concurring.

[2] Penned by Judge Ferdinand J. Marcos.

[3] TSN, 3 September 1990, p. 7 (Pedrano).

[4] TSN, 4 September 1990, p. 14 (Mitante, Jr.).

[5] TSN, 20 November 1989, p. 6.

[6] Exhibit “G,” Records, p. 8.

[7] TSN, 23 January 1989, pp. 7-13; Exhibit “B.”

[8] Records, p. 2

[9] Id. at 2-3.

[10] Id. at 5.

[11] Id. at 35-39.

[12] Id. at 37-39.

[13] Annexes “1” to “6,” Records, pp. 57-62.

[14] Records, p. 55.

[15] Id. at 311.

[16] Id. at 308.

[17] CA Rollo, pp 29-30.

[18] Rollo, p. 29.

[19] Id. at 12-13.

[20] Flores v. Uy, 368 SCRA 347 (2001).

[21] Yobido v. Court of Appeals, 281 SCRA 1 (1997).

[22] Cresenciano Duremdes v. Agustin Duremdes, G.R. No. 138256, November 12, 2003.

[23] TSN, 20 November 1989, p. 6

[24] Ibid.

[25] Exhibits “1” to “7.”

[26] CA Rollo, p. 79.

[27] Picart v. Smith, 37 Phil. 809 (1918), cited in People v. De los Santos, 355 SCRA 415, 430 (2001).

[28] Records, p. 307.

[29] Section 53, Motor Vehicle Law, cited in McKee v. Intermediate Appellate Court, 211 SCRA 517, 541 (1992).

[30] Emphasis supplied.

[31] Mallari, Sr. v. Court of Appeals, 324 SCRA 147 (2000).

[32] Article 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of passengers is further set forth in articles 1755

and 1756.

[33] Article 1755. A common carrier is bound to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

[34] Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

[35] TSN, 23 January 1989, p. 8 (Arriesgado).

[36] Calalas v. Court of Appeals, 332 SCRA 356 (2000).

[37] Light Rail Transit Authority v. Navidad, 397 SCRA 75 (2003).

[38] Estrada v. Consolacion, 71 SCRA 523 (1976).

[39] Calalas v. Court of Appeals, supra.

[40] Kapalaran Bus Line v. Coronado, 176 SCRA 792 (1989).

[41] Estrada v. Consolacion, supra at 530.

[42] Mallari, Sr. v. Court of Appeals, supra.

[43] Phil. Rabbit Bus Lines, Inc. v. Intermediate Appellate Court, 189 SCRA 158 (1990), citing Anuran v. Buño, 17 SCRA 224 (1966).

[44] Phoenix Construction, Inc. v. Intermediate Appellate Court, 148 SCRA 353 (1987).

[45] Supra.

[46] Id. at 367-368.

[47] 93 SCRA 200 (1979).

[48] Id. at 204.

[49] Letter of Instructions (LOI) No. 229 which was issued by then President Ferdinand E. Marcos on December 2, 1974 in recognition of the fact that as statistics then showed, “one of the major causes of fatal or serious accidents in land transportation is the presence of disabled, stalled, or parked motor vehicles or highways without any appropriate early warning device,” requires vehicles to have such devices at all times. It was later on amended by LOI No. 479, issued on November 15, 1976. The pertinent provisions are as follows:

> - That all powers, users or drivers of motor vehicles shall have at all times in their motor vehicles at least one (1) pair of early warning device consisting of a triangular, collapsible reflectorized plates in red and yellow colors at least 5 cm. at the base and 40 cms. at the sides.
>
> - Whenever any motor vehicle is stalled or disabled or is parked for thirty (30) minutes or more on any street or highways, including expressways or limited access roads, the owner, user or driver thereof shall cause the warning device mentioned herein to be installed at least four meters away to the front and rear of the motor vehicle stalled, disabled or parked.
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> - The Land Transportation Commissioner shall require every motor vehicle owner to procure from any source and present at registration of his vehicle, one pair of reflectorized triangular early warning device, as described herein, of any brand or make chosen by said motor vehicle owner. The Land Transportation Commissioner

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shall also promulgate such rules and regulations as are appropriate to effectively implement this order.

[50] Phoenix Construction, Inc. v. Intermediate Appellate Court, supra at 370.

[51] Records, p. 41.

[52] Ibid.

[53] Id. at 54-62.

[54] Now Section 8, rule 8 of the Revised Rules of Civil Procedure, as amended, and the epitaph now reads, "How to contest such documents."

[55] Records, p. 55; Answer, p. 2.

[56] Rollo, pp. 161-169.

[57] Id. at 166.

[58] Metro Manila Transit Corporation vs. Court of Appeals, 298 SCRA 494 (1998).

[59] See Perla Campania de Seguros, Inc. v. Court of Appeals, 185 SCRA 741 (1990).

[60] Annexes "1" to "6" (Answer to the Third-party Complaint), Records, pp. 57-62.

[61] Shafer v. Judge, RTC of Olongapo City, Branch 75, 167 SCRA 386 (1988).

[62] 308 SCRA 559 (1999).

[63] Id. at 569-570

[64] Article 2229, Civil Code.

[65] Supra.

[66] Id. at 801-802.

[67] Metro Manila Transit Corporation, supra.

[68] 259 SCRA 426 (1996).

[69] Id. at 438.

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