

**METRO MANILA TRANSIT CORPORATION AND APOLINARIO AJOC,
PETITIONERS, VS. THE COURT OF APPEALS AND COL. MARTIN P.
SABALBURO, NAPOLEON G. SABALBURO, MARTIN G. SABALBURO,
JR., BABY M...**

G.R. No. 141089. August 01, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Court of Appeals promulgated on August 25, 1999 in CA-G.R. CV No. 45002, which affirmed in toto the judgment of the Regional Trial Court of Makati, Branch 62, in Civil Case No. 16062. The trial court found herein petitioners liable for the death of Florentina Sabalburo in a vehicular accident involving a passenger bus owned by petitioner Metro Manila Transit Corporation (MMTC) and driven by petitioner Apolinario Ajoc, and ordered them to pay damages to private respondents.

The factual backdrop of this case, as found by the Court of Appeals, is as follows:

The eyewitness account of plaintiffs' witness, Maria Zenaida Baylon, tends to show that in the afternoon of December 24, 1986, she, her daughter Maria Zenia and the victim, Florentina Sabalburo, were on their way to Baclaran to buy foodstuffs for their Noche Buena. For some time, they stood on the island at the intersection of St. Andrews Street[2] and Domestic Road, [Pasay City] waiting for the traffic light to change so they could cross to the other side of St. Andrews Street where they intended to take a ride for Baclaran. When the traffic light turned red and the vehicles along St. Andrews Street had stopped, the three of them stepped off the island. Just as they started to cross the street, she (Baylon) saw an MMTC bus coming from their right (Tramo) which was moving at a fast speed. The next moment, the left front portion of the bus hit the victim on the right side of her head. The impact was of such force that the victim's right ear was slashed off and she thereupon fell on the cement and became unconscious. The victim was brought by the bus driver, Apolinario Ajoc and the bus conductress to the San Juan de Dios Hospital where she was given medical attention. Florentina Sabalburo never regained consciousness and it was on January 3, 1987 that she succumbed to her injuries.[3]

On February 16, 1987, private respondents filed a complaint[4] for damages against MMTC and its driver, Ajoc, with the Regional Trial Court of Makati. Docketed as Civil Case No. 16062, the complaint essentially alleged that Ajoc drove the MMTC bus in a wanton and reckless manner, in gross violation of traffic rules and regulations, without due regard for the safety of others, thus causing the untimely death of the victim.

Petitioners denied the material allegations of the complaint, disclaimed any liability for the incident, and insisted that the accident was solely due to the victim's own negligence. The appellate court summed up their version of the incident as follows:

x x x

That at the time material to this case, bus no. 033, with defendant Ajoc driving, then bound towards the direction of Baclaran proper, was slowly accelerating speed on the outer right lane of the road, in response to

the go signal of the traffic light situated in the intersection of Domestic Road [and Andrew Avenue], while the vehicles on the inner right lane which were going to turn left towards Domestic Road were at a stop position, the deceased FLORENTINA G. SABALBURO, whose stationary position was then covered from Ajoc's peripheral vision by a big truck then bound to MIA Road [that] was at a stop position, suddenly, without regard to her own safety and in total defiance of traffic signs designed to protect pedestrian[s], suddenly darted across the road; Ajoc, thus caught by surprise, tried to prevent impact by releasing his accelerator pedal and applying his brakes but the time lag between the deceased's negligent act and Ajoc's prudent and diligent reaction to the former made the impact a certainty.[5]

As special and affirmative defenses, petitioners also claimed that:

- (1) MMTC "hires its drivers, conductors and other employees only after they have successfully passed rigid and extensive theoretical and practical examinations designed to determine their skills and competence...and imposes upon its drivers the duty to undergo regular seminars in defensive driving techniques and road safety habits;"[6]
- (2) MMTC had "taken every human care and foresight possible in carrying their passengers safely to their respective place (sic) of destination as well as in avoiding harm to the life and limbs or risk against pedestrians so that they not be held liable;"[7] and
- (3) "[T]he buses of the defendant corporation, including its bus no. 033 were all properly maintained...before the buses left the garage for their respective routes on that particular day, as in all other days, they were rigidly inspected and examined and properly certified as roadworthy."[8]

The trial court found private respondents' version more credible and on August 12, 1993, decided the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendants as follows:

- Ordering defendants to jointly and severally pay plaintiff Martin Sabalburo actual damages in the sum of P63,943.88 representing the unpaid expenses of plaintiff in connection with the death of Florentina Sabalburo;
- Ordering defendants to jointly and severally pay plaintiffs the sum of P180,000.00 for the loss of the earning capacity of the deceased for a period of ten (10) years;
- Ordering defendants to jointly and severally pay plaintiff Martin Sabalburo the amount of P500,000.00 as moral damages;
- Ordering defendants to jointly and severally pay plaintiff Martin Sabalburo the sum of P50,000.00 as exemplary damages;
- Ordering defendants [to] jointly and severally pay plaintiff Martin Sabalburo the sum of P50,000.00 as attorney's fees;
- Ordering defendants jointly and severally to pay plaintiffs the costs of this suit.

SO ORDERED.[9]

Petitioners seasonably appealed to the Court of Appeals, which docketed their appeal as CA-G.R. CV No. 45002. Before the appellate court, petitioners insisted that the accident was solely the fault of the victim since she suddenly crossed a very busy street with complete disregard for her safety and in violation of traffic rules and regulations designed to protect pedestrians.

As earlier stated, the appellate court, in CA-G.R. CV No. 45002, affirmed the trial court's decision, thus:

IN JUDGMENT, we hold that the appeal interposed by appellants is not meritorious and the judgment of the lower court which we find to be in accordance with law and the evidence is therefore AFFIRMED in toto. Costs against appellants.

SO ORDERED.[10]

Petitioners then moved for reconsideration, but the appellate court denied their motion in its resolution of December 10, 1999.[11]

Hence, the present petition.

Petitioners submit as sole issue for our resolution the following:

WHETHER OR NOT ARTICLE 2179[12] AS AN EXCEPTION TO ARTICLE 2176[13] OF THE CIVIL CODE IS APPLICABLE IN THE INSTANT CASE.

Petitioners insist that a closer look at the facts established by the trial court would show that the incident happened at around 3:30 in the afternoon of December 24, 1986 or barely eight (8) hours before Christmas Eve. Thus, the victim's thoughts were naturally directed towards the Noche Buena. The victim then crossed busy Andrew Avenue for the purpose of getting a ride to Baclaran to buy food for the Christmas Eve celebration. Since her thoughts were on the Christmas Eve feast, she crossed where there was no pedestrian lane and while the green light for vehicular traffic was on. Petitioner MMTC submits that petitioner Ajoc cannot be charged with negligence considering that he cannot see what is in the mind of a pedestrian. Considering that the victim's own negligence was the direct and proximate cause of her injuries and untimely demise, it was error for the Court of Appeals not to have applied Article 2179 of the Civil Code to the instant case.

Petitioners' claim that at the time of the incident, the victim's mind was preoccupied with the preparations for the Noche Buena, is naught but pure conjecture and speculation, with nary a scintilla of proof to support it, according to respondents. Both the trial and appellate courts established that the immediate and proximate cause of the victim's death was the negligent and careless driving by petitioner Ajoc. Therefore, the full force of Article 2176 of the Civil Code applies, concluded respondents.

In asking us to apply Article 2179 of the Civil Code, we note that petitioners are asking us to make a finding that the victim's own negligence was the direct and proximate cause of her death. This we cannot do. The issue of whether a person is negligent or not is a question of fact.[14] The Supreme Court is not a trier of facts,[15] although it has the power and authority to review and reverse the factual findings of lower courts where these do not conform to the evidence[16] or where the courts below came up with contradictory factual findings.[17]

We have thoroughly perused the records of this case, and nowhere do we find evidence to support petitioners' claim that the victim was so engrossed in thinking about Noche Buena while crossing a busy street. Petitioners' stance regarding the victim's alleged negligence is non sequitur. It simply does not follow that one who is run over by a vehicle on Christmas Eve (or any other holiday for that matter) is negligent because his thoughts were on the holiday festivities.

Instead, the records support private respondents' claim that the MMTC bus was being driven carelessly. As found by the trial court and affirmed by the Court of Appeals, the victim and her companions were standing on the island of Andrew Avenue, waiting for the traffic light to change so they could cross. Upon seeing the red light, the victim and her companions started to cross. It was then when petitioner Ajoc, who was trying to beat the red light, hit the victim. As the court a quo noted, Ajoc's claim that "he failed to see the victim and her companions proves his recklessness and lack of caution in driving his vehicle." [18] Findings of fact of the trial court, especially when

affirmed by the Court of Appeals, are binding and conclusive on the Supreme Court.[19] More so, as in this case, where petitioners have not adequately shown that the courts below overlooked or disregarded certain facts or circumstances of such import as would have altered the outcome of the case. Contrary to petitioners' insistence, the applicable law in this case is Article 2176 of the Civil Code and not Article 2179.

Petitioner MMTC next contends that the Court of Appeals erred in finding it solidarily liable for damages with its driver/employee, Ajoc, pursuant to the relevant paragraphs of Article 2180[20] of the Civil Code. It argues that the act of Ajoc in bringing the victim to a hospital reflects MMTC's diligence in the selection and supervision of its drivers, particularly with regard to safety measures. Hence, having exercised the diligence of a good father of a family in the selection and supervision of its employees to prevent damage, MMTC should not be held vicariously liable.

It should be stressed, however, that whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that there was negligence on the part of the employer, either in the selection of the employee (*culpa in eligiendo*) or the supervision over him after the selection (*culpa in vigilando*).[21] Hence, to escape solidary liability for a quasi-delict committed by his employee, an employer must rebut the presumption by presenting convincing proof that in the selection and supervision of his employee, he has exercised the care and diligence of a good father of a family.[22] In the present case, petitioner MMTC failed to rebut the presumption of negligence on its part.

The claim that Ajoc's act of bringing the victim to the nearest medical facility shows adequate supervision by MMTC over its employees deserves but scant consideration. For one, the act was after the fact of negligence on Ajoc's part. For another, the evidence on record shows that Ajoc's act was neither voluntary nor spontaneous; he had to be prevailed upon by the victim's companions to render assistance to his victim.[23] Moreover, the evidence to show that MMTC had exercised due diligence in the selection and supervision of its employees consisted merely of the pertinent guidelines for the screening and selection of its drivers, as well as periodic seminars on road safety. As found by the trial court, and affirmed by the appellate court, petitioner MMTC failed to show that its driver, Ajoc, had actually undergone such screening or had attended said seminars. As previously held, "[t]he mere formulation of various company policies on safety without showing that they were being complied with is not sufficient to exempt (an employer) from liability arising from negligence of its employees. It is incumbent upon petitioner to show that in recruiting and employing the erring driver the recruitment procedures and company policies on efficiency and safety were followed." [24] In this case, MMTC has made no satisfactory showing that it had paid more than lip service to its guidelines and policies in hiring and supervision. Its failure to do so cannot but warrant the proper sanctions from this Court, considering that MMTC is a government-owned public utility organized for the public welfare. Having failed to rebut the presumption of negligence on its part, MMTC is primarily and directly liable for the damages caused by its employee, the erring driver, Ajoc, pursuant to Article 2180 of the Civil Code, which provides as follows:

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.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages 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.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

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.

The owners of public utilities fall within the scope of this article.[25] As earlier stated, MMTC is a public utility, organized and owned by the government for public transport service. Hence, its liability to private respondents, for the negligent and reckless acts of its driver, Ajoc, under Article 2180 of the Civil Code is both manifest and clear.

WHEREFORE, the instant petition is DISMISSED. The assailed decision of the Court of Appeals in CA-G.R. CV No. 45002 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Corona, JJ., concur.

[1] Rollo, pp. 27-36.

[2] The appellate court erroneously kept on referring to the thoroughfare where the accident took place as “St. Andrews Street.” The records show that the proper name of the road is Andrew Avenue. See CA Rollo, p. 43. See also TSN, January 13, 1989, p. 3; TSN, March 5, 1991, pp. 3-4.

[3] Rollo, pp. 27-28.

[4] A separate criminal complaint for homicide through reckless imprudence, docketed as Crim. Case No. 87-11229-P, was also filed against Ajoc before the Regional Trial Court of Pasay City, Branch 111. On July 10, 1990, Ajoc was found guilty of the charge and sentenced to suffer a prison term ranging from two years and four months of prision correccional as a minimum to six years of prision correccional as a maximum. Records, pp. 196-200.

[5] Rollo, p. 29.

[6] Id. at 28.

[7] Supra note 5.

[8] Id. at 29-30.

[9] Records, p. 229.

[10] CA Rollo, p. 78.

[11] Id. at 88.

[12] Civil Code, ART. 2179. When the plaintiff’s own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant’s lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

[13] 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. Such fault or negligence, if there is no pre-existing contractual

relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[14] *Thermochem Inc. v. Naval*, G.R. No. 131541, 344 SCRA 76, 82 (2000).

[15] *Ceremonia v. Court of Appeals*, G.R. No. 103453, 314 SCRA 731, 736 (1999).

[16] *Cang v. Court of Appeals*, G.R. No. 105308, 296 SCRA 128, 144-145 (1998), citing *Philippine National Bank v. Court of Appeals*, G.R. No. 43972, 187 SCRA 735, 739 (1990).

[17] *Yobido v. Court of Appeals*, G.R. No. 113003, 281 SCRA 1, 7-8 (1997).

[18] *Rollo*, p. 32.

[19] *Austria v. Court of Appeals*, G.R. No. 133323, 327 SCRA 668, 674 (2000).

[20] Civil Code, 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.

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Employers shall be liable for the damages 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.

x x x

[21] *Castro v. Acro Taxicab Co.*, No. 49155, 82 Phil. 359, 373 (1948). See also *Phoenix Construction, Inc. v. IAC*, No. L-65295, 148 SCRA 353, 370 (1987); *Pantranco North Express, Inc. v. Baesa*, G.R. Nos. 79050-51, 179 SCRA 384, 393-394 (1989).

[22] *Pantranco North Express, Inc. v. Baesa*, *supra*; *Umali v. Bacani*, No. L-40570, 69 SCRA 263, 267-268 (1976).

[23] TSN, January 13, 1989, pp. 14-20.

[24] *Metro Manila Transit Corp. v. Court of Appeals*, G.R. No. 104408, 223 SCRA 521, 541 (1993), citing *Pantranco North Express, Inc. v. Baesa*, *supra*.

[25] *Tolentino*, V Civil Code 615 (1992).

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