

**CECILIA YAMBAO, PETITIONER, VS. MELCHORITA C. ZUÑIGA,
LEOVIGILDO C. ZUÑIGA, REGINALDO C. ZUÑIGA, AND THE MINORS,
HERMINIGILDO C. ZUÑIGA, JR., AND LOVELY EMILY C. ZUÑIGA
– BOTH R...**

G.R. No. 146173. December 11, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse and set aside the decision[1] of the Court of Appeals, dated September 8, 2000, in CA-G.R. CV No. 52275. The appellate court affirmed the judgment[2] of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 8, in Civil Case No. 581-M-92, finding herein petitioner, among others, liable for the untimely death of Herminigildo Zuñiga in a vehicular accident and ordering her to indemnify his legal heirs, the respondents herein. Also challenged in this petition is the resolution[3] of the Court of Appeals, dated November 27, 2000, denying the petitioner's Motion for Reconsideration.

Petitioner Cecilia Yambao is the registered owner of "Lady Cecil and Rome Trans" passenger bus with Plate No. CVK 606, with a public transport franchise to ply the Novaliches-via Quirino-Alabang route.

The respondents are the legal heirs of the late Herminigildo Zuñiga. Melchorita Zuñiga is the surviving spouse, while Leovigildo, Reginaldo, Herminigildo, Jr., and Lovely Emily are their children.

The facts, as established by the trial court and affirmed by the appellate court, are as follows:

At around 3:30 p.m. of May 6, 1992, the bus owned by the petitioner was being driven by her driver, one Ceferino G. Venturina along the northbound lane of Epifanio delos Santos Avenue (EDSA), within the vicinity of Bagong Barrio, Kalookan City. With Venturina was the bus conductor, Fernando Dumaliang. Suddenly, the bus bumped Herminigildo Zuñiga, a pedestrian. Such was the force of the impact that the left side of the front windshield of the bus was cracked. Zuñiga was rushed to the Quezon City General Hospital where he was given medical attention, but due to the massive injuries sustained, he succumbed shortly thereafter.

Private respondents, as heirs of the victim, filed a Complaint[4] against petitioner and her driver, Venturina, for damages, docketed as Civil Case No. 581-M-92 at the RTC of Malolos City. The complaint essentially alleged that Venturina drove the bus in a reckless, careless and imprudent manner, in violation of traffic rules and regulations, without due regard to public safety, thus resulting in the victim's premature death.

In her Answer, the petitioner vehemently denied the material allegations of the complaint. She tried to shift the blame for the accident upon the victim, theorizing that Herminigildo bumped into her bus, while avoiding an unidentified woman who was chasing him. She further alleged that she was not liable for any damages because as an employer, she exercised the proper diligence of a good father of a family, both in the selection and supervision of her bus driver.

On September 8, 1995, the trial court rendered judgment, the dispositive portion of which reads:

In view of the foregoing consideration, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the herein defendants jointly and severally, with Plaridel Surety & Insurance Co., and Times Surety & Insurance Co. Inc. to the extent of their respective liabilities under their respective insurance policies to pay the herein plaintiffs the following sums of money:

- P50,000.00 as indemnity for the death of Herminigildo Zuñiga;
- P92,000.00 as funeral expenses;
- P200,000.00 as moral damages;
- P30,000.00 as exemplary damages;
- P30,000.00 as attorney's fees;
- P5,000.00 as litigation expenses; and
- To pay the cost of the suit

to be paid by all the herein defendants and third party defendants within thirty (30) days from receipt of this Decision.

The counterclaim of the defendant Cecilia Yambao is hereby dismissed for lack of merit.

SO ORDERED.[5]

In finding for the respondents herein, the trial court observed:

[T]he allegations and evidence presented by the defendants that it was the victim Herminigildo Zuñiga who bumped the bus owned by defendant Cecilia Yambao and her husband... is incredible if not preposterous. No sane person would bump his head or body against a running bus along a big highway like EDSA at Bagong Barrio, Caloocan City and neither did any of the defendants presented (sic) any evidence or proof to show that the victim was mentally deranged at the time of the accident and the presumption therefore is that he was in his normal senses.[6]

In holding the petitioner liable for Herminigildo's death, the trial court applied Article 1756[7] of the Civil Code, observing that petitioner had failed to prove that she observed the diligence required by Articles 1733[8] and 1755[9] of the said Code.

Dissatisfied, Yambao filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 52275, faulting the trial court for failing to appreciate that: (a) it was the victim who ran into her bus, and (b) she had exercised the proper diligence of a bonus pater familias in the selection and supervision of her employee, the driver of said bus.

On September 8, 2000, the Court of Appeals decided CA-G.R. CV No. 52275 as follows:

WHEREFORE, on the foregoing modificatory premises, and considering that the same result has been reached by the trial court, its Decision dated September 8, 1995 is hereby AFFIRMED.

Costs against defendant-appellant.

SO ORDERED.[10]

While sustaining the trial court's findings that Venturina had been reckless and negligent in driving the petitioner's bus, thus hitting the victim with fatal results, the appellate court, however, found the trial court's reliance on Articles 1755 and 1756 of the Civil Code misplaced. It held that this was a case of quasi-delict, there being no

pre-existing contractual relationship between the parties. Hence, the law on common carriers was inapplicable. The court a quo then found the petitioner directly and primarily liable as Venturina's employer pursuant to Article 2180 of the Civil Code as she failed to present evidence to prove that she has observed the diligence of a good father of a family in the selection and supervision of her employees.

Yambao then duly moved for reconsideration, but her motion was denied for want of merit.[11]

Hence, this petition for review, anchored on the following formulation of issues:

I

WHETHER OR NOT THE ALLEGATIONS AND EVIDENCE PRESENTED BY THE PETITIONER, THE VICTIM HERMINIGILDO ZUÑIGA WAS THE ONE WHO BUMPED THE BUS OWNED BY HEREIN PETITIONER CECILIA YAMBAO AND HER HUSBAND AND WHO DISREGARDED THE TRAFFIC RULES AND REGULATIONS AT THE PLACE AND TIME OF THE INCIDENT WHICH UNDOUBTEDLY AND CONCLUSIVELY PROVED THAT IT WAS THE PLAINTIFF'S OWN NEGLIGENCE THAT WAS THE IMMEDIATE AND PROXIMATE CAUSE OF HIS DEATH.

II

WHETHER OR NOT, PETITIONER CECILIA YAMBAO IS NOT LIABLE FOR ANY DAMAGES AND THAT SHE EXERCISED THE PROPER DILIGENCE OF A GOOD FATHER OF THE FAMILY, BOTH IN THE SELECTION AND SUPERVISION OF HER DRIVER AND/OR EMPLOYEE.[12]

At the outset, we must state that the first issue raised by the petitioner is a factual one. Whether a person is negligent or not is a question of fact,[13] which this Court cannot pass upon in a petition for review on certiorari, as our jurisdiction is limited to reviewing errors of law.[14] The resolution of factual issues is the function of the trial court and its findings on these matters are, as a general rule, binding on this Court,[15] more so where these have been affirmed by the Court of Appeals.[16] We have carefully examined and weighed the petitioner's arguments on the first issue submitted, as well as the evidence on record, and find no cogent reason to disregard the cited general rule, much less to reverse the factual findings of the trial court as upheld by the court a quo. Hence, we sustain the trial court's finding, as affirmed by the Court of Appeals, that it was Venturina's reckless and imprudent driving of petitioner's bus, which is the proximate cause of the victim's death.

To our mind, therefore, the only issue before the Court properly is whether petitioner exercised the diligence of a good father of a family in the selection and supervision of her employees, thus absolving her from any liability.

Petitioner contends that as an employer, she observed the proper diligence of a good father of a family, both in the selection and supervision of her driver and therefore, is relieved from any liability for the latter's misdeed. To support her claim, she points out that when Venturina applied with her as a driver in January 1992, she required him to produce not just his driver's license, but also clearances from the National Bureau of Investigation (NBI), the Philippine National Police, and the barangay where he resides. She also required him to present his Social Security System (SSS) Number prior to accepting him for employment. She likewise stresses that she inquired from Venturina's previous employer about his employment record, and only hired him after it was shown to her satisfaction that he had no blot upon his record.

The petitioner's arguments ring hollow and fail to sway this Court.

The law governing petitioner's liability, as the employer of bus driver Venturina, is Article 2180 of the Civil Code, the full text of which reads:

Art. 2180. The obligation imposed by Article 2176[17] 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. (*Italics ours*)

The "diligence of a good father" referred to in the last paragraph of the aforecited statute means diligence in the selection and supervision of employees.[18] Thus, when an employee, while performing his duties, causes damage to persons or property due to his own negligence, there arises the *juris tantum* presumption that the employer is negligent, either in the selection of the employee or in the supervision over him after the selection.[19] For the employer to avoid the solidary liability for a tort committed by his employee, an employer must rebut the presumption by presenting adequate and convincing proof that in the selection and supervision of his employee, he or she exercises the care and diligence of a good father of a family.[20] In the instant case, we find that petitioner has failed to rebut the presumption of negligence on her part.

Petitioner's claim that she exercised due diligence in the selection and supervision of her driver, Venturina, deserves but scant consideration. Her allegation that before she hired Venturina she required him to submit his driver's license and clearances is worthless, in view of her failure to offer in evidence certified true copies of said license and clearances. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the rules of evidence.[21] Moreover, as the court *a quo* aptly observed, petitioner contradicts herself. She declared that Venturina applied with her sometime in January 1992 and she then required him to submit his license and clearances. However, the record likewise shows that she did admit that Venturina submitted the said requirements only on May 6, 1992, or on the very day of the fatal accident itself (*italics for emphasis*). In other words, petitioner's own admissions clearly and categorically show that she did not exercise due diligence in the selection of her bus driver.

In any case, assuming *arguendo* that Venturina did submit his license and clearances when he applied with petitioner in January 1992, the latter still fails the test of due diligence in the selection of her bus driver. Case law teaches that for an employer to have exercised the diligence of a good father of a family, he should not be satisfied with the applicant's mere possession of a professional driver's license; he must also carefully examine the applicant for employment as to his qualifications, his experience and record of service.[22] Petitioner failed to present convincing proof that she went to this extent of verifying Venturina's qualifications, safety record, and

driving history. The presumption *juris tantum* that there was negligence in the selection of her bus driver, thus, remains un rebutted.

Nor did petitioner show that she exercised due supervision over Venturina after his selection. For as pointed out by the Court of Appeals, petitioner did not present any proof that she drafted and implemented training programs and guidelines on road safety for her employees. In fact, the record is bare of any showing that petitioner required Venturina to attend periodic seminars on road safety and traffic efficiency. Hence, petitioner cannot claim exemption from any liability arising from the recklessness or negligence of Venturina.

In sum, petitioner's liability to private respondents for the negligent and imprudent acts of her driver, Venturina, under Article 2180 of the Civil Code is both manifest and clear. Petitioner, having failed to rebut the legal presumption of negligence in the selection and supervision of her driver, is responsible for damages, the basis of the liability being the relationship of *pater familias* or on the employer's own negligence.[23] Thus, this Court has no option but to uphold the ruling of the appellate court.

WHEREFORE, the instant petition is DENIED. The assailed decision of the Court of Appeals, dated September 8, 2000, in CA-G.R. CV No. 52275, as well as its resolution dated November 27, 2000, denying petitioner Cecilia Yambao's motion for reconsideration are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 14-26. Per Associate Justice Teodoro P. Regino, and concurred in by Associate Justices Conchita Carpio Morales and Perlita J. Tria-Tirona.

[2] CA Rollo, pp. 47-55.

[3] Rollo, p. 27.

[4] A separate criminal complaint for reckless imprudence resulting in homicide, docketed as Crim. Case No. 156134, was also filed against Venturina before the Metropolitan Trial Court in Caloocan City, Branch 52. However, the lower court could not proceed with the trial due to the failure and refusal of the accused Venturina to appear. See Rollo, p. 16.

[5] Id. at 35-36.

[6] CA Rollo, pp. 53-54.

[7] Art. 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.

[8] Art. 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 the 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 the passengers is further set forth in articles 1755 and 1756.

[9] Art. 1755. 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 a due regard for all the circumstances.

[10] Rollo, p. 25.

[11] Supra, note 3.

[12] Rollo, p. 97.

[13] Thermochem Incorporated v. Naval, G.R. No. 131541, 20 October 2000, 344 SCRA 76, 82.

[14] Almira v. Court of Appeals, G.R. No. 115966, 20 March 2003, p. 7.

[15] Mckee v. Intermediate Appellate Court, G.R. Nos. 68102-03, 16 July 1992, 211 SCRA 517, 537.

[16] Supra, note 13 at 83.

[17] 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.

[18] Supra, note 15 at 544-545.

[19] Pantranco North Express, Inc. v. Baesa, G.R. Nos. 79050-51, 14 November 1989, 179 SCRA 384, 393.

[20] Metro Manila Transit Corp. v. Court of Appeals, G.R. No. 141089, 1 August 2002, pp. 8-9 citing Pantranco North Express, Inc. v. Baesa, supra, note 19; Umali v. Hon. Bacani, 161 Phil. 351, 357 (1976).

[21] Manzano v. Perez, Sr., 414 Phil., 728, 738 (2001).

[22] Ramos v. Pepsi-Cola Bottling Co. of the Philippines, 125 Phil. 701, 703-704 (1967) citing Campo v. Camarote, 100 Phil. 459, 463 (1956).

[23] Metro Manila Transit Corp. v. Court of Appeals, G.R. No. 104408, 21 June 1993, 223 SCRA 521, 539.

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