

**MARCELO MACALINAO, SUBSTITUTED BY ESPERANZA MACALINAO
AND ANTONIO MACALINAO, PETITIONERS, VS. EDDIE MEDECIELO
ONG AND GENOVEVO SEBASTIAN, RESPONDENTS.**

G.R. NO. 146635. December 14, 2005

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Petition for Review on Certiorari assailing the Decision[1] and Resolution[2] of the Court of Appeals dated 31 May 2000 and 7 September 2000, respectively, in CA-G.R. CV No. 52963. The Court of Appeals reversed the judgment of the trial court and dismissed the complaint for damages filed by Marcelo Macalinao (Macalinao) against Eddie Medecielo Ong (Ong) and Genovevo Sebastian (Sebastian) for insufficiency of evidence.

The antecedent facts follow.

Macalinao and Ong were employed as utility man and driver, respectively, at the Genetron International Marketing (Genetron), a single proprietorship owned and operated by Sebastian. On 25 April 1992, Sebastian instructed Macalinao, Ong and two truck helpers to deliver a heavy piece of machinery—a reactor/motor for mixing chemicals, to Sebastian's manufacturing plant in Angat, Bulacan. While in the process of complying with the order, the vehicle driven by Ong, Genetron's Isuzu Elf truck with plate no. PMP-106 hit and bumped the front portion of a private jeepney with plate no. DAF-922 along Caypombo, Sta. Maria, Bulacan at around 11:20 in the morning.[3]

Both vehicles incurred severe damages while the passengers sustained physical injuries as a consequence of the collision.[4] Macalinao incurred the most serious injuries among the passengers of the truck. He was initially brought to the Sta. Maria District Hospital for first aid treatment but in view of the severity of his condition, he was transferred to the Philippine Orthopedic Center at the instance of Sebastian. He was again moved to the Capitol Medical Center by his parents, petitioners herein, for medical reasons and later to the Philippine General Hospital for financial considerations.[5]

Macalinao's body was paralyzed and immobilized from the neck down as a result of the accident and per doctor's advice, his foot was amputated. He also suffered from bed sores and infection. His inmedicable condition, coupled with the doctor's recommendation, led his family to bring him home where he died on 7 November 1992.[6]

Before he died, Macalinao was able to file an action for damages against both Ong and Sebastian before the Regional Trial Court (RTC) of Quezon City, Branch 81.[7] After his death, Macalinao was substituted by his parents in the action.[8] A criminal case for reckless imprudence resulting to serious physical injuries[9] had also been instituted earlier against Ong but for reasons which do not appear in the records of this case, trial thereon did not ensue.[10]

After trial in the civil action, the RTC held that based on the evidence, Ong drove the Isuzu truck in a reckless and imprudent manner thereby causing the same to hit the private jeepney. It observed that while respondents claimed that Ong was driving cautiously and prudently at the time of the mishap, no evidence was presented to substantiate the claim.[11] It declared Ong negligent and at the same time, it held that Sebastian failed to exercise the diligence of a good father of a family in the selection and supervision of Ong. Consequently, the trial court pronounced the two of them jointly liable to pay actual, moral, and exemplary damages as well as civil indemnity for Macalinao's death. The trial court subsequently increased the monetary award[12] upon petitioners' motion for reconsideration thereof.

On appeal, the appellate court reversed the findings of the trial court. It held that the evidence presented by petitioners was woefully scant to support a verdict of negligence against Ong. And since respondents' liability hinged squarely on proof of Ong's negligence, neither of them could be held liable for damages to petitioners.[13]

Aggrieved at the ruling, petitioners elevated the case to this Court. They herein contend that contrary to the conclusion reached by the Court of Appeals, the evidence conclusively establish fault or negligence on the part of Ong and justify the award of damages in their favor.

The petition is meritorious.

The issue of negligence is factual and, in quasi-delicts, crucial in the award of damages.[14] In the case at bar, the crux of the controversy is the sufficiency of the evidence presented to support a finding of negligence against Ong. Given the contradictory conclusions of the trial court and the appellate court on this issue, this Court is impelled to ascertain for itself which court made the correct determination.

While as a rule factual findings of the Court of Appeals are deemed conclusive in cases brought to us on appeal, we have also consistently pronounced that we may review its findings of fact in the following instances, among others:

(i) when the judgment of the Court of Appeals was based on a misapprehension of facts; (ii) when the factual findings are conflicting; (iii) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (iv) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[15]

Said exceptions obtain in this case thus, a departure from the application of the general rule is warranted.

In reversing the trial court and absolving respondents from liability, the appellate court made the following pronouncement:

The evidence presented is woefully scant. The pictures of the collision afford no basis for concluding that it was the fault of the defendant driver, or that he was driving recklessly. The police report contains no findings as to the road conditions, estimates of the relative speed of the vehicles, or their exact position at the time of the accident. And even so, entries in the police blotter should not be given significance or probative value as they do not constitute conclusive proof of the truth thereof. Nor were eyewitnesses presented, not even affidavits or statements to give any indication as to what actually happened. The police investigator's findings are sketchy at best, with only the phrase "Isuzu lost control" as his opinion, with no explanation how he reached it. Civil cases require evidence of a lesser degree than criminal cases, but one sentence by one who did not even witness an event, is not conclusive proof.

...

There was only the fact of the collision before the trial court. The attendant circumstances were not established, and no fault could be determined using the evidence, both testimonial and documentary presented.[16]

Contrary to the above conclusion of the appellate court, the evidence on record coupled with the doctrine of *res ipsa loquitur* sufficiently establishes Ong's negligence.

We focus first on the evidence presented before the trial court.

The photographs of the accident which the appellate court cavalierly brushed aside as insignificant deserve substantial cogitation. In *Jose v. Court of Appeals*,^[17] we upheld the trial court's reliance on photographs of the accident as opposed to a party's obviously biased testimony. In so doing, we stated:

In criminal cases such as murder or rape where the accused stands to lose his liberty if found guilty, this Court has, in many occasions, relied principally upon physical evidence in ascertaining the truth. In *People v. Vasquez*,^[18] where the physical evidence on record ran counter to the testimonial evidence of the prosecution witnesses, we ruled that the physical evidence should prevail.^[19]

Physical evidence is a mute but an eloquent manifestation of truth which ranks high in our hierarchy of trustworthy evidence.^[20]

In this case, while there is a dearth of testimonial evidence to enlighten us about what actually happened, photographs^[21] depicting the relative positions of the vehicles immediately after the accident took place do exist. It is well established that photographs, when duly verified and shown by extrinsic evidence to be faithful representations of the subject as of the time in question, are, in the discretion of the trial court, admissible in evidence as aids in arriving at an understanding of the evidence, the situation or condition of objects or premises or the circumstances of an accident.^[22]

According to American courts, photographs are admissible in evidence in motor vehicle accident cases when they appear to have been accurately taken and are proved to be a faithful and clear representation of the subject, which cannot itself be produced, and are of such nature as to throw light upon a disputed point.^[23] Before a photograph may be admitted in evidence, however, its accuracy or correctness must be proved, and it must be authenticated or verified^[24] first. In the case at bar, the photographer testified in open court and properly identified the pictures as the ones he took at the scene of the accident.^[25]

An examination of said photographs clearly shows that the road where the mishap occurred is marked by a line at the center separating the right from the left lane. Based on the motorist's right of way rule, the Isuzu truck which was headed towards Norzagaray, Bulacan^[26] should have been occupying the left lane while the private jeepney which was traversing the road to the town proper of Sta. Maria, Bulacan^[27] should have been in the right lane. Exhibits "L" and "L-4" among the photographs, however, reveal that in the aftermath of the collision, the Isuzu truck usurped the opposite lane to such an extent that only its right rear wheel remained in the left lane, a few inches from the demarcation line. Its two front wheels and left rear wheel were planted squarely on the private jeepney's lane and the Isuzu truck had rotated such that its front no longer pointed towards Norzagaray but partially faced the town proper of Sta. Maria instead.

While ending up at the opposite lane is not conclusive proof of fault in automobile collisions, the position of the two vehicles gives rise to the conclusion that it was the Isuzu truck which hit the private jeepney rather than the other way around. The smashed front of the Isuzu truck is pressed against the private jeepney's left front portion near the driver's side. The private jeepney is positioned diagonally in the right lane; its front at the rightmost corner of the road while its rear remained a few feet from the demarcation line. Based on the angle at which it

stopped, the private jeepney obviously swerved to the right in an unsuccessful effort to avoid the Isuzu truck. This would support the statement of the police investigator that the Isuzu truck lost control[28] and hit the left front portion of the private jeepney.[29] It would also explain why the driver of the private jeepney died immediately after being brought to the hospital,[30] since in such a scenario, the brunt of the collision logically bore down on him.

Moreover, the unequal size and weight of the two vehicles would make it improbable for the relatively lighter private jeepney to have stricken the heavier truck with such force as to push the latter to the former's side of the road. Had that been the case, the two vehicles would have ended up crushed together at the center of the road or at the Isuzu truck's lane instead of rolling to a stop at the private jeepney's lane.

Another piece of evidence which supports a finding of negligence against Ong is the police report of the incident denoted as Entry No. 04-229 of the Sta. Maria Police Station. The report states that the Isuzu truck was the one which hit the left front portion of the private jeepney.[31] This piece of evidence was disregarded by the Court of Appeals on the ground that entries in police blotters should not be given significance or probative value as they do not constitute conclusive proof of the truth thereof.

While true in most instances, it must still be remembered that although police blotters are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein.[32] Entries in police records made by a police officer in the performance of the duty especially enjoined by law are prima facie evidence of the fact therein stated,[33] and their probative value may be either substantiated or nullified by other competent evidence.[34]

In this case, the police blotter was identified and formally offered as evidence and the person who made the entries thereon was likewise presented in court. On the other hand, aside from a blanket allegation that the driver of the other vehicle was the one at fault, respondents did not present any evidence to back up their charge and show that the conclusion of the police investigator was false. Given the paucity of details in the report, the investigator's observation could have been easily refuted and overturned by respondents through the simple expedient of supplying the missing facts and showing to the satisfaction of the

court that the Isuzu truck was blameless in the incident. Ong was driving the truck while the two other truck helpers also survived the accident. Any or all of them could have given their testimony to shed light on what actually transpired, yet not one of them was presented to substantiate the claim that Ong was not negligent.

Since respondents failed to refute the contents of the police blotter, the statement therein that the Isuzu truck hit the private jeepney and not the other way around is deemed established. The prima facie nature of the police report ensures that if it remains unexplained or uncontradicted, it will be sufficient to establish the facts posited therein.[35]

While not constituting direct proof of Ong's negligence, the foregoing pieces of evidence justify the application of *res ipsa loquitur*, a Latin phrase which literally means "the thing or the transaction speaks for itself." [36]

Res ipsa loquitur recognizes that parties may establish prima facie negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence.[37] It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part.[38]

The doctrine can be invoked only when under the circumstances, direct evidence is absent and not readily available.[39] This is based in part upon the theory that the defendant in charge of the instrumentality which

causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it while the plaintiff has no such knowledge, and is therefore compelled to allege negligence in general terms and rely upon the proof of the happening of the accident in order to establish negligence.[40] The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.[41]

In this case, Macalinao could no longer testify as to the cause of the accident since he is dead. Petitioners, while substituting their son as plaintiff, have no actual knowledge about the event since they were not present at the crucial moment. The driver of the private jeepney who could have shed light on the circumstances is likewise dead. The only ones left with knowledge about the cause of the mishap are the two truck helpers who survived, both employees of Sebastian, and Ong, who is not only Sebastian's previous employee but his co-respondent in this case as well. In the circumstances, evidence as to the true cause of the accident is, for all intents and purposes, accessible to respondents but not to petitioners. The witnesses left are unlikely to divulge to petitioners what they knew about the cause of the accident if the same militates against the interest of their employer. This justifies the invocation of the doctrine.

Under local jurisprudence, the following are the requisites for the application of *res ipsa loquitur*:

- (1) The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
- (2) It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
- (3) The possibility of contributing conduct which would make the plaintiff responsible is eliminated.[42]

We are convinced that all the above requisites are present in the case at bar.

No two motor vehicles traversing opposite lanes will collide as a matter of course unless someone is negligent, thus, the first requisite for the application of the doctrine is present. Ong was driving the Isuzu truck which, from the evidence adduced, appears to have precipitated the collision with the private jeepney. Driving the Isuzu truck gave Ong exclusive management and control over it, a fact which shows that the second requisite is also present. No contributory negligence could be attributed to Macalinao relative to the happening of the accident since he was merely a passenger in the Isuzu truck. Respondents' allegation that Macalinao was guilty of contributory negligence for failing to take the necessary precautions to ensure his safety while onboard the truck[43] is too specious for belief particularly as respondents did not even present any evidence to prove such allegation. The last requisite is, therefore, likewise present.

There exists a fourth requisite under American jurisprudence, that is, that the defendant fails to offer any explanation tending to show that the injury was caused by his or her want of due care.[44] In this case, while respondents claimed that Ong drove cautiously and prudently during the time in question, no evidence was proffered to substantiate the same. In fact, Ong did not bother to testify to explain his actuations and to show that he exercised due care when the accident happened, so even this requisite is fulfilled.

All the requisites for the application of the rule of *res ipsa loquitur* are present, thus a reasonable presumption or inference of Ong's negligence arises. In consonance with the effect of the doctrine, the burden of proving due care at the time in question shifts to respondents. Unfortunately, as previously discussed, aside from blanket allegations that Ong exercised prudence and due care while driving on the day of the accident, respondents proffered no other proof. As a consequence, the *prima facie* finding of negligence against Ong, remaining unexplained and/or uncontradicted, is deemed established. This in turn warrants a finding that Ong is liable for damages to petitioners.

Such liability of Ong is solidary with Sebastian pursuant to Art. 2176 in relation to Art. 2180 of the Civil Code

which provide:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done

Art. 2180. The obligation imposed by Art. 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.

. . .

Employers shall be liable for the damage 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 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.

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris familias* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees.[45] To avoid liability for a quasi-delict committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[46]

In an attempt to exculpate himself from liability, Sebastian claimed that he exercised due care in selecting Ong as a driver. Before he hired Ong, he allegedly required him to produce police and NBI clearances and he took into account the recommendations of Ong's previous employer and friends.[47] Sebastian also stressed that he instructed Ong to drive slowly and carefully and to take necessary precautions.[48] He likewise admonished Ong to be careful after the latter had some minor accidents in the parking area.[49]

However, Sebastian's statements are not sufficient to prove that he exercised the diligence of a good father of a family in the selection of Ong. His testimony is self-serving and devoid of corroboration as he did not bother to support the same with document evidence. Moreover, Sebastian could not even remember whether the recommendation from Ong's previous employer was made verbally or in writing.[50]

On the other hand, due diligence in supervision requires the formulation of rules and regulations for the guidance of employees and the issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules.[51] Admonitions to drive carefully without the corresponding guidelines and monitoring of the employee do not satisfy the due diligence required by law either.

In short, Sebastian's claims fall short of what is required by law to overcome the presumption of negligence in the selection and supervision of his employee. The trial court therefore correctly held him solidarily liable with Ong to petitioners.

In an obvious ploy to relieve himself from liability should the appellate court's decision be reversed, Sebastian averred that Macalinao is not entitled to damages. He anchored his claim on the novel argument that the provisions of Art. 2180 apply only when the injured party is a third person but it has no application to an employee like Macalinao.[52] He likewise postulated that recovery from the Social Security System, State Insurance Fund, Employee's Compensation Commission, and the Philippine Medical Care Act, the government agencies with which petitioners filed a claim in view of Macalinao's injury and subsequent death, preclude pursuing alternate recourse or recovering from other sources until the former claims have been rejected.[53]

Sebastian is grasping at straws. Art. 2180 makes no distinction whatsoever whether the claimant is an employee

or a third person relative to the employer. *Ubi lex non distinguit nec nos distinguere debemos*. Where the law does not distinguish, neither should we.[54]

Moreover, petitioner's claim against Sebastian is not based upon the fact of Macalinao's previous employment with him but on the solidary liability of the latter for the negligent act of one of his employees. Such is not precluded by prior claims with the government agencies enumerated. One is based on compulsory coverage of government benefits while the other is based on a cause of action provided by law.

Additionally, respondents postulated that since it was Macalinao who sustained physical injuries and died, he was the one who suffered pain, not petitioners so moral damages are not recoverable in this case.[55]

The relatives of the victim who incurred physical injuries in a quasi-delict are not proscribed from recovering moral damages in meritorious cases. To hold otherwise would give rise to the ridiculous scenario where a defendant may be compelled to pay moral damages in a quasi-delict causing physical injuries but will be relieved from doing so should those same injuries cause the victim's death.

In the case of *Lambert v. Heirs of Ray Castillon*,[56] we held that in quasi-delicts:

. . . the award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender.[57] (Emphasis Supplied.)

The trial court awarded moral damages in the amount of P30,000.00 but since prevailing jurisprudence has fixed the same at P50,000.00,[58] there is a need to increase the award to reflect the recent rulings.

Lastly, respondents claim that exemplary damages is not warranted in this case. Under the law, exemplary damages may be granted in quasi-delicts if the defendant acted with gross negligence.[59] Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[60]

Ong's gross negligence in driving the Isuzu truck precipitated the accident. This is lucidly portrayed in the photographs on record and it justifies the award of exemplary damages in petitioners' favor. However, the trial court's award of P10,000.00 is insufficient, thus the Court deems it proper to increase the award to P25,000.00 under the circumstances.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated 31 May 2000, as well as its Resolution dated 7 September 2000, are hereby SET ASIDE. The Decision of the Regional Trial Court of Quezon City, Branch 81 dated 12 April 1996 as amended by the Order dated 23 May 1996 is hereby REINSTATED with the modifications that the award for moral damages is increased to P50,000.00 to conform with prevailing jurisprudence and the award for exemplary damages is increased to P25,000.00. Costs against respondents.

SO ORDERED.

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

[1] Penned by Associate Justice Presbitero J. Velasco, Jr. (now the Court Administrator of the Supreme Court), concurred in by Associate Justices Bernardo Ll. Salas and Edgardo P. Cruz; Rollo, pp. 104-113.

[2] *Id.* at 126-127.

[3] RTC Records, pp. 333, 336.

[4]Id. at 336.

[5]Ibid.

[6]Id. at 336-337.

[7]Id. at 7-10.

[8] Id. at 333.

[9] Id. at 182.

[10]TSN, 14 April 1993, pp. 15-17.

[11] RTC Records, p. 338.

[12] Wherefore, premises considered, judgment is hereby rendered ordering defendants Eddie Medecielo Ong and Genovevo Sebastian doing business under the name and style Genetron International Marketing to jointly and severally pay the plaintiffs the following amounts:

1. The total amount of P109,354.33 for medical and hospitalization expenses;
2. The amount of P11,000.00 for funeral and burial expenses;
3. The amount of P91,200.00 for loss of earning capacity;
4. The amount of P50,000.00 as civil indemnity for death;
5. The amount of P30,000.00 as moral damages; and
6. The sum of P10,000.00 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

[13]Rollo, pp. 110-112.

[14] Pleyto and Phil. Rabbit Bus Lines, Inc. v. Lomboy, G.R. No. 148737, 16 June 2004, 432 SCRA 329.

[15] Tugade v. Court of Appeals, 433 Phil. 258 (2003) citing Twin Towers Condominium Corp. v. Court of Appeals, G.R. No. 123552, 27 February 2003.

[16] Rollo, pp. 110-111.

[17] 379 Phil. 30 (2000).

[18] 280 SCRA 160 (1997).

[19] Supra note 17.

[20] See Aradillos v. Court of Appeals, G.R. No. 135619. 15 January 2004, 419 SCRA 514; People v. Bonifacio, 426 Phil. 511 (2002); People v. Marquina, 426 Phil. 46 (2002); Tangan v. Court of Appeals, 424 Phil. 139 (2002); People v. Whisenhunt, 420 Phil. 677 (2001); People v. Ubaldo, 419 Phil. 718 (2001); People v. Palijon, 397 Phil. 545 (2000); People v. Candare, 388 Phil. 1010 (2000); People v. Roche, 386 Phil. 287 (2000); People v. Arafiles, 282 Phil. 59 (2000); Jose v. Court of Appeals, supra note 17.

[21] Exhibits "L" to "L-4", RTC Records, pp. 205-209.

[22]VICENTE J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, Vol. VII citing *Aldanese v. Salutillo*, 47 Phil 548.

[23] *Andersen v. Bee Line, Inc.* 1 N.Y. 2d 169, 151 N.Y. S. 2d 633, 134 N.E. 2d 457 (1956); *Hawes v. Atlantic Refining Co.*, 236 N.C. 643, 74 S.F. 2d 17 (1953), cited in 8 Am Jur 2d §1287.

[24] 8 Am Jur 2d §1287.

[25] TSN, 16 July 1993, p. 4.

[26] TSN, 19 May 1993, p. 3.

[27] *Id.* at 2.

[28] *Supra* note 26.

[29] RTC Records, p. 181.

[30] *Supra* note 26 at 4.

[31] *Supra* notes 26 and 28.

[32]*Lao v. Standard Insurance Co., Inc.*, G.R. No. 140023, 14 August 2003, 409 SCRA 43.

[33]*Ibid.* Sec. 44, Rule 130 of the Rules on Evidence.

[34] *Lao v. Standard Insurance Co. Inc.*, *supra* note 32 citing *U.S. v. Que Ping*, 40 Phil. 17, 19 (1919).

[35] *Cometa v. Court of Appeals*, 378 Phil. 1187 (1999) citing *People v. Montilla*, 285 SCRA 703, 720 (1998).

[36] *Ramos v. Court of Appeals*, 378 Phil. 1198 (1999).

[37]*Ludo and Luym Corporation v. Court of Appeals*, G.R. No. 125483 1 February 2001, 351 SCRA 35.

[38] *Ramos v. Court of Appeals*, *supra* note 36.

[39]*Layugan v. Intermediate Appellate Court*, G.R. No. L-73998, 14 November 1988, 167 SCRA 376.

[40] *D.M. Consunji v. Court of Appeals*, G.R. No. 137873, 20 April 2001, 357 SCRA 249.

[41] *Ibid.*

[42] *Ramos v. Court of Appeals*, *supra* note 36.

[43] *Rollo*, p. 193.

[44]*Supra* note 23 at 8.

[45] *Delsan Transport Lines, Inc. v. C & A Construction, Inc.* G.R. No. 156034, 1 October 2003, 412 SCRA 524.

[46] *LRTA v. Natividad*, 445 Phil. 31 (2003); *Metro Manila Transit Corp. v. Court of Appeals*, 435 Phil. 129 (2002) citing *Pantranco North Express, Inc. v. Baesa*, G.R. No. 79050-51, 14 November 1989, 179 SCRA 384; *Umali v. Bacani*, G.R. No. L-40570, 30 January 1976, 69 SCRA 263.

[47] TSN, 31 January 1995, pp. 5-6, 10-14.

[48]*Id* at 6.

[49] *Id.* at 14.

[50]Id. at 10.

[51] Fabre v. Court of Appeals, 328 Phil. 774 (1996).

[52] Rollo, pp. 193, 200-202.

[53]Id. at 201-202.

[54] Recana v. Court of Appeals, G.R. No. 123850, 5 January 2001, 349 SCRA 24.

[55] Rollo, pp. 202-203.

[56] G.R. No. 160709, 23 February 2005, 452 SCRA 285.

[57] Ibid citing CESAR SANGCO, TORTS AND DAMAGES, 1994 ed., p. 986.

[58]Id. citing Pestaño v. Sps. Sumayang, G.R. No. 139875, 4 December 2000, 346 SCRA 870, 879.

[59] Art. 2231, Civil Code.

[60] Fernando v. Sandiganbayan, G.R. No. 96183, 19 August 1992, 212 SCRA 680 citing BALLANTINE'S LAW DICTIONARY 3rd ed. p. 537.

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