

ERNESTO SYKI, PETITIONER, VS. SALVADOR BEGASA, RESPONDENT.

G.R. No. 149149. October 23, 2003

Ponente: CORONA, J.

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CORONA, J.:

Assailed in this petition for review under Rule 45 of the Rules of Court is the decision[1] dated January 31, 2001 of the Court of Appeals, affirming the decision dated May 5, 1998 of the Regional Trial Court of Negros Occidental, Branch 48, Bacolod City, in Civil Case No. 7458 for damages. The trial court awarded actual and moral damages to herein respondent Salvador Begasa who suffered injuries in an accident due to the negligence of Elizalde Sablayan, the truck driver of petitioner Ernesto Syki.

The facts follow.

On June 22, 1992, around 11:20 a.m., near the corner of Araneta and Magsaysay Streets, Bacolod City, respondent Salvador Begasa and his three companions flagged down a passenger jeepney driven by Joaquin Espina and owned by Aurora Pisueno. While respondent was boarding the passenger jeepney (his right foot already inside while his left foot still on the boarding step of the passenger jeepney), a truck driven by Elizalde Sablayan and owned by petitioner Ernesto Syki bumped the rear end of the passenger jeepney. Respondent fell and fractured his left thigh bone (femur). He also suffered lacerations and abrasions in his left leg, as follows:

- Fracture left femur, junction of middle and distal third, comminuted.
- Lacerated wounds, left popliteal 10 cm. left leg anterior 2.5 cm.
- Abrasion left knee.[2]

On October 29, 1992, respondent filed a complaint for damages for breach of common carrier's contractual obligations and quasi-delict against Aurora Pisueno, the owner of the passenger jeepney, herein petitioner Ernesto Syki, the owner of the truck, and Elizalde Sablayan, the driver of the truck.

After hearing, the trial court dismissed the complaint against Aurora Pisueno, the owner and operator of the passenger jeepney but ordered petitioner Ernesto Syki and his truck driver, Elizalde Sablayan, to pay respondent Salvador Begasa, jointly and severally, actual and moral damages plus attorney's fees as follows:

- Actual damages of P48,308.20 less the financial assistance given by defendant Ernesto Syki to plaintiff Salvador Begasa in the amount of P4,152.55 or a total amount of P44,155.65;
- The amount of P30,000.00 as moral damages;
- The amount of P20,000.00 as reasonable attorney's fees.[3]

Petitioner Syki and his driver appealed to the Court of Appeals. However, the appellate court found no reversible error in the decision of the trial court and affirmed the same in toto.[4]

The appellate court also denied their motion for reconsideration.[5]

Aggrieved, petitioner Ernesto Syki filed the instant petition for review, arguing that the Court of Appeals erred in not finding respondent Begasa guilty of contributory negligence. Hence, the damages awarded to him (respondent) should have been decreased or mitigated. Petitioner also contends that the appellate court erred in ruling that he failed to observe the diligence of a good father of a family in the selection and supervision of his driver. He asserts that he presented sufficient evidence to prove that he observed the diligence of a good father of a family in selecting and supervising the said employee, thus he should not be held liable for the injuries sustained by respondent.

The petition has no merit.

Article 2180 of the Civil Code provides:

x x x x x x x x

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 x x x x x

The responsibility treated in this article shall cease when the persons herein mentioned prove they observed all the diligence of a good father of a family to prevent damage.

From the above provision, when an injury is caused by the negligence of an employee, a legal presumption instantly arises that the employer was negligent in the selection and/or supervision of said employee. The said presumption may be rebutted only by a clear showing on the part of the employer that he exercised the diligence of a good father of a family in the selection and supervision of his employee. If the employer successfully overcomes the legal presumption of negligence, he is relieved of liability.[6]

In other words, the burden of proof is on the employer.

The question is: how does an employer prove that he indeed exercised the diligence of a good father of a family in the selection and supervision of his employee? The case of *Metro Manila Transit Corporation vs. Court of Appeals*[7] is instructive:

In fine, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment. . .In making proof in its or his case, it is paramount that the best and most complete evidence is formally entered.

Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees. Petitioner's attempt to prove its "deligentissimi patris familias" in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.

Our view that the evidence for petitioner MMTC falls short of the required evidentiary quantum as would convincingly and undoubtedly prove its observance of the diligence of a good father of a family has its precursor in the underlying rationale pronounced in the earlier case of *Central Taxicab Corp. vs. Ex-Meralco Employees Transportation Co., et. al.*, set amidst an almost identical factual setting, where we held that:

The failure of the defendant company to produce in court any 'record' or other documentary proof tending to establish that it had exercised all the diligence of a good father of a family in the selection and supervision of its drivers and buses, notwithstanding the calls therefore by both the trial court and the opposing counsel, argues strongly against its pretensions.

We are fully aware that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has by his negligence, caused damage to another. x x x (R)educing the testimony of Albert to its proper proportion, we do not have enough trustworthy evidence left to go by. We are of the considerable opinion, therefore, that the believable evidence on the degree of care and diligence that has been exercised in the selection and supervision of Roberto Leon y Salazar, is not legally sufficient to overcome the presumption of negligence against the defendant company. (emphasis ours)

The 1993 ruling in Metro Manila Transit Corporation was reiterated in a recent case again involving the Metro Manila Transit Corporation,[8] thus:

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.

In this case, MMTC sought to prove that it exercised the diligence of a good father of a family with respect to the selection of employees by presenting mainly testimonial evidence on its hiring procedure. According to MMTC, applicants are required to submit professional driving licenses, certifications of work experience, and clearances from the National Bureau of Investigation; to undergo tests of their driving skills, concentration, reflexes, and vision; and, to complete training programs on traffic rules, vehicle maintenance, and standard operating procedures during emergency cases.

x x x x x x x x

Although testimonies were offered that in the case of Pedro Musa all these precautions were followed, the records of his interview, of the results of his examinations, and of his service were not presented. . . [T]here is no record that Musa attended such training programs and passed the said examinations before he was employed. No proof was presented that Musa did not have any record of traffic violations. Nor were records of daily inspections, allegedly conducted by supervisors, ever presented. . . The failure of MMTC to present such documentary proof puts in doubt the credibility of its witnesses.

x x x x x x x x

It is noteworthy that, in another case involving MMTC, testimonial evidence of identical content, which MMTC presented to show that it exercised the diligence of a good father of a family in the selection and supervision of employees and thus avoid vicarious liability for the negligent acts of its employees, was held to be insufficient to overcome the presumption of negligence against it. (emphasis ours)

Based therefore on jurisprudential law, the employer must not merely present testimonial evidence to prove that he observed the diligence of a good father of a family in the selection and supervision of his employee, but he must also support such testimonial evidence with concrete or documentary evidence. The reason for this is to obviate the biased nature of the employer's testimony or that of his witnesses.[9]

In this case, petitioner's evidence consisted entirely of testimonial evidence. He testified that before he hired Elizalde Sablayan, he required him to submit a police clearance in order to determine if he was ever involved in any vehicular accident. He also required Sablayan to undergo a driving test conducted by his mechanic, Esteban Jaca. Petitioner claimed that he, in fact, accompanied Sablayan during the driving test and that during the test, Sablayan was taught to read and understand traffic signs like "Do Not Enter," "One Way," "Left Turn" and "Right Turn."

Petitioner's mechanic, Esteban Jaca, on the other hand, testified that Sablayan passed the driving test and never figured in any vehicular accident except the one in question. He also testified that he maintained in good condition all the trucks of petitioner by checking the brakes, horns and tires thereof before providing hauling services.[10]

Petitioner, however, never presented the alleged police clearance given to him by Sablayan nor the results of Sablayan's driving test. Petitioner also did not present records of the regular inspections that his mechanic allegedly conducted. The unsubstantiated and self-serving testimonies of petitioner and his mechanic were, without doubt, insufficient to overcome the legal presumption that petitioner was negligent in the selection and supervision of his driver. Accordingly, we affirm the ruling of the Court of Appeals that petitioner is liable for the injuries suffered by respondent.

It should be emphasized that the legal obligation of employers to observe due diligence in the selection and supervision of their employees provided in Article 2180 of the Civil Code is not an empty provision or a mere formalism since the non-observance thereof actually becomes the basis of the employers' vicarious liability.[11] Employers should thus seriously observe such a degree of diligence (and prove it in court by sufficient and concrete evidence) that would exculpate them from liability.

Petitioner next contends that, even if he is liable, the award of damages given to respondent should be decreased or mitigated because respondent was guilty of contributory negligence. Petitioner claims that his driver was allegedly caught unaware when the passenger jeepney hailed by respondent suddenly stopped at the intersection of a national highway. Petitioner argues that, had respondent flagged down the passenger jeepney at the proper place, the accident could have been avoided.[12]

Petitioner's contention has no merit.

Article 2179 provides:

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.

The underlying precept of the above article on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence.[13]

In the present case, was respondent partly negligent and thus, should not recover the full amount of the damages awarded by the trial court? We rule in the negative.

There was no evidence that respondent Begasa and his three companions flagged down the passenger jeepney in a prohibited area. All the facts showed was that the passenger jeepney was near the corner of Araneta and Magsaysay Streets, Bacolod City when petitioner's driver bumped it from the rear. No city resolution, traffic regulation or DPWH memorandum was presented to show that the passenger jeepney picked up respondent and his three companions in a prohibited area. In fact, the trial court dismissed the case against the driver and owner of the passenger jeepney on the ground that they were not liable, meaning, that no negligence could be attributed to them. The trial court also found no negligence on the part of respondent Begasa. This factual finding was affirmed in toto by the Court of Appeals.[14]

It must be emphasized that petitions for review under Rule 45 of the Rules of Court should deal only with questions of law. The factual conclusions of the Court of Appeals are given great weight and even finality by the Supreme Court, specially when, as in the present case, the appellate court upholds the findings of fact of the trial

court. The factual findings of the Court of Appeals can only be overturned if it is shown that such findings are obviously whimsical, capricious and arbitrary, or contrary to the factual findings of the trial court.[15] In this case, we find no reason to overturn the factual findings of the Court of Appeals. Thus, we affirm the appellate court's finding that there was no contributory negligence on the part of respondent.

In sum, the sole and proximate cause of the accident was the negligence of petitioner's driver who, as found by the lower courts, did not slow down even when he was already approaching a busy intersection within the city proper.[16] The passenger jeepney had long stopped to pick up respondent and his three companions and, in fact, respondent was already partly inside the jeepney when petitioner's driver rear-ended it. The impact was so strong that respondent fell and fractured his left thigh bone (femur), and suffered severe wounds in his left knee and leg. No doubt petitioner's driver was reckless.

Since the negligence of petitioner's driver was the sole and proximate cause of the accident, petitioner is liable, under Article 2180 of the Civil Code, to pay damages to respondent Begasa for the injuries sustained by him.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole.

[2] Rollo, p. 21.

[3] Id., p. 20.

[4] Id., pp. 19-26.

[5] Id., p. 27.

[6] 2 J. CEZAR S. SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES 553-4 (1994); 5 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 519 (1959).

[7] 223 SCRA 521 [1993].

[8] Metro Manila Transit Corporation vs. Court of Appeals, 298 SCRA 495 [1998].

[9] SUPRA note 8, at 535, citing Garcia, et al. vs. Gonzales, et al., 183 SCRA 72 [1990].

[10] Rollo, pp. 13-16.

[11] Supra note 8, at 540.

[12] Id., pp. 11-12.

[13] 1 J. CEZAR S. SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES 55 (1993).

[14] Rollo, p. 24.

[15] SUPRA note 8, at 531-32.

[16] Rollo, p. 24.

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