

## **MAURICIO MANLICLIC AND PHILIPPINE RABBIT BUS LINES, INC., PETITIONERS, VS. MODESTO CALAUNAN, RESPONDENT.**

*G.R. NO. 150157. January 25, 2007*

Ponente: CHICO-NAZARIO, J.

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### **CHICO-NAZARIO, J.:**

Assailed before Us is the decision[1] of the Court of Appeals in CA-G.R. CV No. 55909 which affirmed in toto the decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Civil Case No. D-10086, finding petitioners Mauricio Manliclic and Philippine Rabbit Bus Lines, Inc. (PRBLI) solidarily liable to pay damages and attorney's fees to respondent Modesto Calaunan.

The factual antecedents are as follows:

The vehicles involved in this case are: (1) Philippine Rabbit Bus No. 353 with plate number CVD-478, owned by petitioner PRBLI and driven by petitioner Mauricio Manliclic; and (2) owner-type jeep with plate number PER-290, owned by respondent Modesto Calaunan and driven by Marcelo Mendoza.

At around 6:00 to 7:00 o'clock in the morning of 12 July 1988, respondent Calaunan, together with Marcelo Mendoza, was on his way to Manila from Pangasinan on board his owner-type jeep. The Philippine Rabbit Bus was likewise bound for Manila from Concepcion, Tarlac. At approximately Kilometer 40 of the North Luzon Expressway in Barangay Lalangan, Plaridel, Bulacan, the two vehicles collided. The front right side of the Philippine Rabbit Bus hit the rear left side of the jeep causing the latter to move to the shoulder on the right and then fall on a ditch with water resulting to further extensive damage. The bus veered to the left and stopped 7 to 8 meters from point of collision.

Respondent suffered minor injuries while his driver was unhurt. He was first brought for treatment to the Manila Central University Hospital in Kalookan City by Oscar Buan, the conductor of the Philippine Rabbit Bus, and was later transferred to the Veterans Memorial Medical Center.

By reason of such collision, a criminal case was filed before the RTC of Malolos, Bulacan, charging petitioner Manliclic with Reckless Imprudence Resulting in Damage to Property with Physical Injuries, docketed as Crim. Case No. 684-M-89. Subsequently on 2 December 1991, respondent filed a complaint for damages against petitioners Manliclic and PRBLI before the RTC of Dagupan City, docketed as Civil Case No. D-10086. The criminal case was tried ahead of the civil case. Among those who testified in the criminal case were respondent Calaunan, Marcelo Mendoza and Fernando Ramos.

In the civil case (now before this Court), the parties admitted the following:

- The parties agreed on the capacity of the parties to sue and be sued as well as the venue and the identities of the vehicles involved;
- The identity of the drivers and the fact that they are duly licensed;

- The date and place of the vehicular collision;
- The extent of the injuries suffered by plaintiff Modesto Calaunan and the existence of the medical certificate;
- That both vehicles were going towards the south; the private jeep being ahead of the bus;
- That the weather was fair and the road was well paved and straight, although there was a ditch on the right side where the jeep fell into.[3]

When the civil case was heard, counsel for respondent prayed that the transcripts of stenographic notes (TSNs)[4] of the testimonies of respondent Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case be received in evidence in the civil case in as much as these witnesses are not available to testify in the civil case.

Francisco Tuliao testified that his brother-in-law, respondent Calaunan, left for abroad sometime in November, 1989 and has not returned since then. Rogelio Ramos took the stand and said that his brother, Fernando Ramos, left for Amman, Jordan, to work. Rosalia Mendoza testified that her husband, Marcelo Mendoza, left their residence to look for a job. She narrated that she thought her husband went to his hometown in Panique, Tarlac, when he did not return after one month. She went to her husband's hometown to look for him but she was informed that he did not go there.

The trial court subpoenaed the Clerk of Court of Branch 8, RTC, Malolos, Bulacan, the court where Criminal Case No. 684-M-89 was tried, to bring the TSNs of the testimonies of respondent Calaunan,[5] Marcelo Mendoza[6] and Fernando Ramos[7] in said case, together with other documentary evidence marked therein. Instead of the Branch Clerk of Court, it was Enrique Santos Guevara, Court Interpreter, who appeared before the court and identified the TSNs of the three afore-named witnesses and other pertinent documents he had brought.[8] Counsel for respondent wanted to mark other TSNs and documents from the said criminal case to be adopted in the instant case, but since the same were not brought to the trial court, counsel for petitioners compromised that said TSNs and documents could be offered by counsel for respondent as rebuttal evidence.

For the defendants, petitioner Manliclic and bus conductor Oscar Buan testified. The TSN[9] of the testimony of Donato Ganiban, investigator of the PRBLI, in Criminal Case No. 684-M-89 was marked and allowed to be adopted in the civil case on the ground that he was already dead.

Respondent further marked, among other documents, as rebuttal evidence, the TSNs[10] of the testimonies of Donato Ganiban, Oscar Buan and petitioner Manliclic in Criminal Case No. 684-M-89.

The disagreement arises from the question: Who is to be held liable for the collision?

Respondent insists it was petitioner Manliclic who should be liable while the latter is resolute in saying it was the former who caused the smash up.

The versions of the parties are summarized by the trial court as follows:

The parties differed only on the manner the collision between the two (2) vehicles took place. According to the plaintiff and his driver, the jeep was cruising at the speed of 60 to 70 kilometers per hour on the slow lane of the expressway when the Philippine Rabbit Bus overtook the jeep and in the process of overtaking the jeep, the Philippine Rabbit Bus hit the rear of the jeep on the left side. At the time the Philippine Rabbit Bus hit the jeep, it was about to overtake the jeep. In other words, the Philippine Rabbit Bus was still at the back of the jeep when the jeep was hit. Fernando Ramos corroborated the testimony of the plaintiff and Marcelo Mendoza. He said that he was on another jeep following the Philippine Rabbit Bus and the jeep of plaintiff when the incident took place. He said, the jeep of the plaintiff overtook them and the said jeep of the plaintiff was followed by the Philippine Rabbit Bus which was running very fast. The bus also overtook the jeep in which he was riding. After that, he heard a loud sound. He saw the jeep of the plaintiff swerved to the right on a grassy portion of

the road. The Philippine Rabbit Bus stopped and they overtook the Philippine Rabbit Bus so that it could not moved (sic), meaning they stopped in front of the Philippine Rabbit Bus. He testified that the jeep of plaintiff swerved to the right because it was bumped by the Philippine Rabbit bus from behind.

Both Mauricio Manliclic and his driver, Oscar Buan admitted that the Philippine Rabbit Bus bumped the jeep in question. However, they explained that when the Philippine Rabbit bus was about to go to the left lane to overtake the jeep, the latter jeep swerved to the left because it was to overtake another jeep in front of it. Such was their testimony before the RTC in Malolos in the criminal case and before this Court in the instant case. [Thus, which of the two versions of the manner how the collision took place was correct, would be determinative of who between the two drivers was negligent in the operation of their respective vehicles.][11]

Petitioner PRBLI maintained that it observed and exercised the diligence of a good father of a family in the selection and supervision of its employee, specifically petitioner Manliclic.

On 22 July 1996, the trial court rendered its decision in favor of respondent Calaunan and against petitioners Manliclic and PRBLI. The dispositive portion of its decision reads:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants ordering the said defendants to pay plaintiff jointly and solidarily the amount of P40,838.00 as actual damages for the towing as well as the repair and the materials used for the repair of the jeep in question; P100,000.00 as moral damages and another P100,000.00 as exemplary damages and P15,000.00 as attorney's fees, including appearance fees of the lawyer. In addition, the defendants are also to pay costs.[12]

Petitioners appealed the decision via Notice of Appeal to the Court of Appeals.[13]

In a decision dated 28 September 2001, the Court of Appeals, finding no reversible error in the decision of the trial court, affirmed it in all respects.[14]

Petitioners are now before us by way of petition for review assailing the decision of the Court of Appeals. They assign as errors the following:

I

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S QUESTIONABLE ADMISSION IN EVIDENCE OF THE TSN's AND OTHER DOCUMENTS PRESENTED IN THE CRIMINAL CASE.

II

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S RELIANCE ON THE VERSION OF THE RESPONDENT ON HOW THE ACCIDENT SUPPOSEDLY OCCURRED.

III

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S UNFAIR DISREGARD OF HEREIN PETITIONER PRBL's DEFENSE OF EXERCISE OF DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES.

IV

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S QUESTIONABLE AWARD OF DAMAGES AND ATTORNEY'S FEE.

With the passing away of respondent Calaunan during the pendency of this appeal with this Court, we granted the

Motion for the Substitution of Respondent filed by his wife, Mrs. Precila Zarate Vda. De Calaunan, and children, Virgilio Calaunan, Carmelita Honeycomb, Evelyn Calaunan, Marko Calaunan and Liwayway Calaunan.[15]

In their Reply to respondent's Comment, petitioners informed this Court of a Decision[16] of the Court of Appeals acquitting petitioner Manliclic of the charge[17] of Reckless Imprudence Resulting in Damage to Property with Physical Injuries attaching thereto a photocopy thereof.

On the first assigned error, petitioners argue that the TSNs containing the testimonies of respondent Calaunan,[18] Marcelo Mendoza[19] and Fernando Ramos[20] should not be admitted in evidence for failure of respondent to comply with the requisites of Section 47, Rule 130 of the Rules of Court.

For Section 47, Rule 130[21] to apply, the following requisites must be satisfied: (a) the witness is dead or unable to testify; (b) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests; (c) the former case involved the same subject as that in the present case, although on different causes of action; (d) the issue testified to by the witness in the former trial is the same issue involved in the present case; and (e) the adverse party had an opportunity to cross-examine the witness in the former case.[22]

Admittedly, respondent failed to show the concurrence of all the requisites set forth by the Rules for a testimony given in a former case or proceeding to be admissible as an exception to the hearsay rule. Petitioner PRBLI, not being a party in Criminal Case No. 684-M-89, had no opportunity to cross-examine the three witnesses in said case. The criminal case was filed exclusively against petitioner Manliclic, petitioner PRBLI's employee. The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees.[23]

Notwithstanding the fact that petitioner PRBLI was not a party in said criminal case, the testimonies of the three witnesses are still admissible on the ground that petitioner PRBLI failed to object on their admissibility.

It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence; otherwise, the objection shall be treated as waived, since the right to object is merely a privilege which the party may waive. Thus, a failure to except to the evidence because it does not conform to the statute is a waiver of the provisions of the law. Even assuming *ex gratia argumenti* that these documents are inadmissible for being hearsay, but on account of failure to object thereto, the same may be admitted and considered as sufficient to prove the facts therein asserted.[24] Hearsay evidence alone may be insufficient to establish a fact in a suit but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves.[25]

In the case at bar, petitioner PRBLI did not object to the TSNs containing the testimonies of respondent Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case when the same were offered in evidence in the trial court. In fact, the TSNs of the testimonies of Calaunan and Mendoza were admitted by both petitioners.[26] Moreover, petitioner PRBLI even offered in evidence the TSN containing the testimony of Donato Ganiban in the criminal case. If petitioner PRBLI argues that the TSNs of the testimonies of plaintiff's witnesses in the criminal case should not be admitted in the instant case, why then did it offer the TSN of the testimony of Ganiban which was given in the criminal case? It appears that petitioner PRBLI wants to have its cake and eat it too. It cannot argue that the TSNs of the testimonies of the witnesses of the adverse party in the criminal case should not be admitted and at the same time insist that the TSN of the testimony of the witness for the accused be admitted in its favor. To disallow admission in evidence of the TSNs of the testimonies of Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case and to admit the TSN of the testimony of Ganiban would be unfair.

We do not subscribe to petitioner PRBLI's argument that it will be denied due process when the TSNs of the testimonies of Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case are to be admitted in the civil case. It is too late for petitioner PRBLI to raise denial of due process in relation to Section 47, Rule 130 of the Rules of Court, as a ground for objecting to the admissibility of the TSNs. For failure to object at the proper time, it waived its right to object that the TSNs did not comply with Section 47.

In *Mangio v. Court of Appeals*,<sup>[27]</sup> this Court, through Associate Justice Reynato S. Puno,<sup>[28]</sup> admitted in evidence a TSN of the testimony of a witness in another case despite therein petitioner's assertion that he would be denied due process. In admitting the TSN, the Court ruled that the raising of denial of due process in relation to Section 47, Rule 130 of the Rules of Court, as a ground for objecting to the admissibility of the TSN was belatedly done. In so doing, therein petitioner waived his right to object based on said ground.

Petitioners contend that the documents in the criminal case should not have been admitted in the instant civil case because Section 47 of Rule 130 refers only to "testimony or deposition." We find such contention to be untenable. Though said section speaks only of testimony and deposition, it does not mean that documents from a former case or proceeding cannot be admitted. Said documents can be admitted they being part of the testimonies of witnesses that have been admitted. Accordingly, they shall be given the same weight as that to which the testimony may be entitled.<sup>[29]</sup>

On the second assigned error, petitioners contend that the version of petitioner Manliclic as to how the accident occurred is more credible than respondent's version. They anchor their contention on the fact that petitioner Manliclic was acquitted by the Court of Appeals of the charge of Reckless Imprudence Resulting in Damage to Property with Physical Injuries.

To be resolved by the Court is the effect of petitioner Manliclic's acquittal in the civil case.

From the complaint, it can be gathered that the civil case for damages was one arising from, or based on, quasi-delict.<sup>[30]</sup> Petitioner Manliclic was sued for his negligence or reckless imprudence in causing the collision, while petitioner PRBLI was sued for its failure to exercise the diligence of a good father in the selection and supervision of its employees, particularly petitioner Manliclic. The allegations read:

"4. That sometime on July 12, 1988 at around 6:20 A.M. plaintiff was on board the above-described motor vehicle travelling at a moderate speed along the North Luzon Expressway heading South towards Manila together with MARCELO MENDOZA, who was then driving the same;

"5. That approximately at kilometer 40 of the North Luzon Express Way, the above-described motor vehicle was suddenly bumped from behind by a Philippine Rabbit Bus with Body No. 353 and with plate No. CVD 478 then being driven by one Mauricio Manliclic of San Jose, Concepcion, Tarlac, who was then travelling recklessly at a very fast speed and had apparently lost control of his vehicle;

"6. That as a result of the impact of the collision the above-described motor vehicle was forced off the North Luzon Express Way towards the rightside where it fell on its driver's side on a ditch, and that as a consequence, the above-described motor vehicle which maybe valued at EIGHTY THOUSAND PESOS (P80,000) was rendered a total wreck as shown by pictures to be presented during the pre-trial and trial of this case;

"7. That also as a result of said incident, plaintiff sustained bodily injuries which compounded plaintiff's frail physical condition and required his hospitalization from July 12, 1988 up to and until July 22, 1988, copy of the medical certificate is hereto attached as Annex "A" and made an integral part hereof;

"8. That the vehicular collision resulting in the total wreckage of the above-described motor vehicle as well as bodily (sic) sustained by plaintiff, was solely due to the reckless imprudence of the defendant driver Mauricio

Manliclic who drove his Philippine Rabbit Bus No. 353 at a fast speed without due regard or observance of existing traffic rules and regulations;

“9. That defendant Philippine Rabbit Bus Line Corporation failed to exercise the diligence of a good father of (sic) family in the selection and supervision of its drivers; x x x”[31]

Can Manliclic still be held liable for the collision and be found negligent notwithstanding the declaration of the Court of Appeals that there was an absence of negligence on his part?

In exonerating petitioner Manliclic in the criminal case, the Court of Appeals said:

To the following findings of the court a quo, to wit: that accused-appellant was negligent “when the bus he was driving bumped the jeep from behind”; that “the proximate cause of the accident was his having driven the bus at a great speed while closely following the jeep”; x x x

We do not agree.

The swerving of Calaunan’s jeep when it tried to overtake the vehicle in front of it was beyond the control of accused-appellant.

x x x x

Absent evidence of negligence, therefore, accused-appellant cannot be held liable for Reckless Imprudence Resulting in Damage to Property with Physical Injuries as defined in Article 365 of the Revised Penal Code.[32]

From the foregoing declaration of the Court of Appeals, it appears that petitioner Manliclic was acquitted not on reasonable doubt, but on the ground that he is not the author of the act complained of which is based on Section 2(b) of Rule 111 of the Rules of Criminal Procedure which reads:

(b) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

In spite of said ruling, petitioner Manliclic can still be held liable for the mishap. The afore-quoted section applies only to a civil action arising from crime or ex delicto and not to a civil action arising from quasi-delict or culpa aquiliana. The extinction of civil liability referred to in Par. (e) of Section 3, Rule 111 [now Section 2 (b) of Rule 111], refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as a quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.[33]

A quasi-delict or culpa aquiliana is a separate legal institution under the Civil Code with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime – a distinction exists between the civil liability arising from a crime and the responsibility for quasi-delicts or culpa extra-contractual. The same negligence causing damages may produce civil liability arising from a crime under the Penal Code, or create an action for quasi-delicts or culpa extra-contractual under the Civil Code.[34] It is now settled that acquittal of the accused, even if based on a finding that he is not guilty, does not carry with it the extinction of the civil liability based on quasi delict.[35]

In other words, if an accused is acquitted based on reasonable doubt on his guilt, his civil liability arising from the crime may be proved by preponderance of evidence only. However, if an accused is acquitted on the basis that he was not the author of the act or omission complained of (or that there is declaration in a final judgment that the fact from which the civil might arise did not exist), said acquittal closes the door to civil liability based on the

crime or ex delicto. In this second instance, there being no crime or delict to speak of, civil liability based thereon or ex delicto is not possible. In this case, a civil action, if any, may be instituted on grounds other than the delict complained of.

As regards civil liability arising from quasi-delict or culpa aquiliana, same will not be extinguished by an acquittal, whether it be on ground of reasonable doubt or that accused was not the author of the act or omission complained of (or that there is declaration in a final judgment that the fact from which the civil liability might arise did not exist). The responsibility arising from fault or negligence in a quasi-delict is entirely separate and distinct from the civil liability arising from negligence under the Penal Code.[36] An acquittal or conviction in the criminal case is entirely irrelevant in the civil case[37] based on quasi-delict or culpa aquiliana.

Petitioners ask us to give credence to their version of how the collision occurred and to disregard that of respondent's. Petitioners insist that while the PRBLI bus was in the process of overtaking respondent's jeep, the latter, without warning, suddenly swerved to the left (fast) lane in order to overtake another jeep ahead of it, thus causing the collision.

As a general rule, questions of fact may not be raised in a petition for review. The factual findings of the trial court, especially when affirmed by the appellate court, are binding and conclusive on the Supreme Court.[38] Not being a trier of facts, this Court will not allow a review thereof unless:

(1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[39]

After going over the evidence on record, we do not find any of the exceptions that would warrant our departure from the general rule. We fully agree in the finding of the trial court, as affirmed by the Court of Appeals, that it was petitioner Manliclic who was negligent in driving the PRBLI bus which was the cause of the collision. In giving credence to the version of the respondent, the trial court has this say:

x x x Thus, which of the two versions of the manner how the collision took place was correct, would be determinative of who between the two drivers was negligent in the operation of their respective vehicle.

In this regard, it should be noted that in the statement of Mauricio Manliclic (Exh. 15) given to the Philippine Rabbit Investigator CV Cabading no mention was made by him about the fact that the driver of the jeep was overtaking another jeep when the collision took place. The allegation that another jeep was being overtaken by the jeep of Calaunan was testified to by him only in Crim. Case No. 684-M-89 before the Regional Trial Court in Malolos, Bulacan and before this Court. Evidently, it was a product of an afterthought on the part of Mauricio Manliclic so that he could explain why he should not be held responsible for the incident. His attempt to veer away from the truth was also apparent when it would be considered that in his statement given to the Philippine Rabbit Investigator CV Cabading (Exh. 15), he alleged that the Philippine Rabbit Bus bumped the jeep of Calaunan while the Philippine Rabbit Bus was behind the said jeep. In his testimony before the Regional Trial Court in Malolos, Bulacan as well as in this Court, he alleged that the Philippine Rabbit Bus was already on the left side of the jeep when the collision took place. For this inconsistency between his statement and testimony, his explanation regarding the manner of how the collision between the jeep and the bus took place should be taken with caution. It might be true that in the statement of Oscar Buan given to the

Philippine Rabbit Investigator CV Cabading, it was mentioned by the former that the jeep of plaintiff was in the act of overtaking another jeep when the collision between the latter jeep and the Philippine Rabbit Bus took place. But the fact, however, that his statement was given on July 15, 1988, one day after Mauricio Manliclic gave his statement should not escape attention. The one-day difference between the giving of the two statements would be significant enough to entertain the possibility of Oscar Buan having received legal advice before giving his statement. Apart from that, as between his statement and the statement of Manliclic himself, the statement of the latter should prevail. Besides, in his Affidavit of March 10, 1989, (Exh. 14), the unreliability of the statement of Oscar Buan (Exh. 13) given to CV Cabading rear its “ugly head” when he did not mention in said affidavit that the jeep of Calaunan was trying to overtake another jeep when the collision between the jeep in question and the Philippine Rabbit bus took place.

x x x x

If one would believe the testimony of the defendant, Mauricio Manliclic, and his conductor, Oscar Buan, that the Philippine Rabbit Bus was already somewhat parallel to the jeep when the collision took place, the point of collision on the jeep should have been somewhat on the left side thereof rather than on its rear. Furthermore, the jeep should have fallen on the road itself rather than having been forced off the road. Useless, likewise to emphasize that the Philippine Rabbit was running very fast as testified to by Ramos which was not controverted by the defendants.[40]

Having ruled that it was petitioner Manliclic’s negligence that caused the smash up, there arises the juris tantum presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family.[41] Under Article 2180[42] of the New Civil Code, when an injury is caused by the negligence of the employee, there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after selection or both. The liability of the employer under Article 2180 is direct and immediate; it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee. Therefore, it is incumbent upon the private respondents to prove that they exercised the diligence of a good father of a family in the selection and supervision of their employee.[43]

In the case at bar, petitioner PRBLI maintains that it had shown that it exercised the required diligence in the selection and supervision of its employees, particularly petitioner Manliclic. In the matter of selection, it showed the screening process that petitioner Manliclic underwent before he became a regular driver. As to the exercise of due diligence in the supervision of its employees, it argues that presence of ready investigators (Ganiban and Cabading) is sufficient proof that it exercised the required due diligence in the supervision of its employees.

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. To fend off vicarious liability, employers must submit concrete proof, including documentary evidence, that they complied with everything that was incumbent on them.[44]

In *Metro Manila Transit Corporation v. Court of Appeals*,[45] it was explained that:

Due diligence in the supervision of employees on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory

functions.

In order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, it is not enough to emptily invoke the existence of said company guidelines and policies on hiring and supervision. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. The mere allegation of the existence of hiring procedures and supervisory policies, without anything more, is decidedly not sufficient to overcome such presumption.

We emphatically reiterate our holding, as a warning to all employers, that “the formulation of various company policies on safety without showing that they were being complied with is not sufficient to exempt petitioner 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.” x x x.

The trial court found that petitioner PRBLI exercised the diligence of a good father of a family in the selection but not in the supervision of its employees. It expounded as follows:

From the evidence of the defendants, it seems that the Philippine Rabbit Bus Lines has a very good procedure of recruiting its driver as well as in the maintenance of its vehicles. There is no evidence though that it is as good in the supervision of its personnel. There has been no iota of evidence introduced by it that there are rules promulgated by the bus company regarding the safe operation of its vehicle and in the way its driver should manage and operate the vehicles assigned to them. There is no showing that somebody in the bus company has been employed to oversee how its driver should behave while operating their vehicles without courting incidents similar to the herein case. In regard to supervision, it is not difficult to observe that the Philippine Rabbit Bus Lines, Inc. has been negligent as an employer and it should be made responsible for the acts of its employees, particularly the driver involved in this case.

We agree. The presence of ready investigators after the occurrence of the accident is not enough to exempt petitioner PRBLI from liability arising from the negligence of petitioner Manliclic. Same does not comply with the guidelines set forth in the cases above-mentioned. The presence of the investigators after the accident is not enough supervision. Regular supervision of employees, that is, prior to any accident, should have been shown and established. This, petitioner failed to do. The lack of supervision can further be seen by the fact that there is only one set of manual containing the rules and regulations for all the drivers of PRBLI. [46] How then can all the drivers of petitioner PRBLI know and be continually informed of the rules and regulations when only one manual is being lent to all the drivers?

For failure to adduce proof that it exercised the diligence of a good father of a family in the selection and supervision of its employees, petitioner PRBLI is held solidarily responsible for the damages caused by petitioner Manliclic’s negligence.

We now go to the award of damages. The trial court correctly awarded the amount of P40,838.00 as actual damages representing the amount paid by respondent for the towing and repair of his jeep.[47] As regards the awards for moral and exemplary damages, same, under the circumstances, must be modified. The P100,000.00 awarded by the trial court as moral damages must be reduced to P50,000.00.[48] Exemplary damages are imposed by way of example or correction for the public good.[49] The amount awarded by the trial court must, likewise, be lowered to P50,000.00.[50] The award of P15,000.00 for attorney’s fees and expenses of litigation is in order and authorized by law.[51]

WHEREFORE, premises considered, the instant petition for review is DENIED. The decision of the Court of Appeals in CA-G.R. CV No. 55909 is AFFIRMED with the MODIFICATION that (1) the award of moral

damages shall be reduced to P50,000.00; and (2) the award of exemplary damages shall be lowered to P50,000.00. Costs against petitioners.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] CA rollo, pp. 191-193.

[2] Records, pp. 437-456.

[3] Pre-Trial Order; Records, p. 143.

[4] TSNs were admitted per Order dated 13 September 1994; Records, p. 341.

[5] Exhs. G-3 to G-10 (19 April 1991) and G-11 to G-36 (1 July 1991).

[6] Exh. D-4 (5 February 1993).

[7] Exh. E-4.

[8] Exhs. A to H, with submarkings.

[9] Exh. 19.

[10] Exhs. M to P.

[11] Rollo, pp. 45-47.

[12] Records, p. 456.

[13] Id. at 459.

[14] CA rollo, p. 193.

[15] Rollo, pp. 59-62, 88.

[16] CA-G.R. CR No. 19749.

[17] Crim. Case No. 684-M-89.

[18] Exhs. G-3 to G-10 (19 April 1991) and G-11 to G-36 (1 July 1991).

[19] Exh. D-4 (5 February 1993).

[20] Exh. E-4.

[21] Sec. 47. Testimony or deposition at a former proceeding. - The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

[22] Samalio v. Court of Appeals, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 470.

[23] Philippine Rabbit Bus Lines, Inc. v. People, G.R. No. 147703, 14 April 2004, 427 SCRA 456, 471.

[24] Tison v. Court of Appeals, G.R. No. 121027, 31 July 1997, 276 SCRA 582.

- [25] Top-Weld Manufacturing, Inc. v. ECED, S.A., G.R. No. 44944, 9 August 1985, 138 SCRA 118.
- [26] Records, pp. 336-337.
- [27] G.R. No. 139849, 5 December 2001, 371 SCRA 466, 474-476.
- [28] Now Chief Justice.
- [29] People v. Martinez, G.R. No. 116918, 19 June 1997, 274 SCRA 259, 272.
- [30] 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 provision of this Chapter.
- [31] Records, pp. 1-3.
- [32] Rollo, pp. 112-114.
- [33] Elcano v. Hill, G.R. No. L-24803, 26 May 1977, 77 SCRA 98, 106.
- [34] Andamo v. Intermediate Appellate Court, G.R. No. 74761, 6 November 1990, 191 SCRA 195, 203-204.
- [35] Heirs of the Late Guaring, Jr. v. Court of Appeals, 336 Phil. 274, 279 (1997).
- [36] McKee v. Intermediate Appellate Court, G.R. No. 68102 and No. 68103, 16 July 1992, 211 SCRA 517, 536.
- [37] Castillo v. Court of Appeals, G.R. No. 48541, 21 August 1989, 176 SCRA 591, 598.
- [38] Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. Of Iloilo, Inc., G.R. No. 159831, 14 October 2005, 473 SCRA 151, 162.
- [39] Sigaya v. Mayuga, G.R. No. 143254, 18 August 2005, 467 SCRA 341, 352-353.
- [40] Rollo, pp. 47-50.
- [41] Metro Manila Transit Corporation v. Court of Appeals, G.R. No. 104408, 21 June 1993, 223 SCRA 521, 539.
- [42] 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.
- 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
- 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.
- [43] Dulay v. Court of Appeals, 313 Phil. 8, 23 (1995).
- [44] Perla Compania de Seguros, Inc. v. Sarangaya III, G.R. No. 147746, 25 October 2005, 474 SCRA 191, 202.
- [45] Supra note 41 at 540-541.
- [46] TSN, 16 February 1995, pp. 23-24.
- [47] Exhs. C to C-4 and F. Records, pp. 232-236, 288. Article 2219 (2), Civil Code.

[48] Kapalaran Bus Line v. Coronado, G.R. No. 85331, 25 August 1989, 176 SCRA 792, 803.

[49] Article 2229, Civil Code.

[50] Tiu v. Arriesgado, G.R. No. 138060, 1 September 2004, 437 SCRA 426, 451; Philtranco Service Enterprises, Inc. v. Court of Appeals, G.R. No. 120553, 17 June 1997, 273 SCRA 562, 574-575.

[51] Article 2208 (1), (2) and (5), Civil Code.

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