

VICTORY LINER, INC. PETITIONER, VS. HEIRS OF ANDRES MALECDAN, RESPONDENTS.

G.R. No. 154278. December 27, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Eighth Division of the Court of Appeals, which affirmed the decision[2] of the Regional Trial Court of Baguio City, Branch 5, in Civil Case No. 3082-R, ordering petitioner and its driver, Ricardo Joson, Jr., to pay damages to the heirs of Andres Malecdan, who had been killed after being hit by a bus while attempting to cross the National Highway in Barangay Nungnungan 2 in Cauayan, Isabela.

The facts of the case are as follows:

Petitioner is a common carrier. Private respondent Elena Malecdan is the widow of the deceased, while private respondents Veronica, Virginia, Mary Pauline, Arthur, Viola, Manuel and Valentin Malecdan are their children.

Andres Malecdan was a 75 year-old farmer residing in Barangay Nungnungan 2, Municipality of Cauayan, Province of Isabela.[3] On July 15, 1994, at around 7:00 p.m., while Andres was crossing the National Highway on his way home from the farm, a Dalin Liner bus on the southbound lane stopped to allow him and his carabao to pass. However, as Andres was crossing the highway, a bus of petitioner Victory Liner, driven by Ricardo C. Joson, Jr., bypassed the Dalin bus. In so doing, respondent hit the old man and the carabao on which he was riding. As a result, Andres Malecdan was thrown off the carabao, while the beast toppled over.[4] The Victory Liner bus sped past the old man, while the Dalin bus proceeded to its destination without helping him.

The incident was witnessed by Andres Malecdan's neighbor, Virgilio Lorena, who was resting in a nearby waiting shed after working on his farm. Malecdan sustained a wound on his left shoulder, from which bone fragments protruded. He was taken by Lorena and another person to the Cagayan District Hospital where he died a few hours after arrival.[5] The carabao also died soon afterwards.[6] Lorena executed a sworn statement before the police authorities. Subsequently, a criminal complaint for reckless imprudence resulting in homicide and damage to property was filed against the Victory Liner bus driver Ricardo Joson, Jr.[7]

On October 5, 1994, private respondents brought this suit for damages in the Regional Trial Court, Branch 5, Baguio City,[8] which, in a decision rendered on July 17, 2000, found the driver guilty of gross negligence in the operation of his vehicle and Victory Liner, Inc. also guilty of gross negligence in the selection and supervision of Joson, Jr. Petitioner and its driver were held liable for damages. The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally to the plaintiffs the amounts of:

a. P50,000.00 as death indemnity;

- b. P88,339.00 for actual damages;
- c. P200,000.00 for moral damages;
- d. P50,000.00 as exemplary damages;
- e. Thirty percent (30%) as attorney's fees of whatever amount that can be collected by the plaintiff; and
- f. The costs of the suit.

The counterclaim of the defendant Victory Liner, Inc. against the plaintiffs and the third-party complaint of the same defendant against the Zenith Insurance Corporation are dismissed.

SO ORDERED.[9]

On appeal, the decision was affirmed by the Court of Appeals, with the modification that the award of attorney's fees was fixed at P50,000.00.[10]

Hence, this appeal raising the following issues:

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPEALED DECISION OF THE REGIONAL TRIAL COURT GRANTING P200,000.00 AS MORAL DAMAGES WHICH IS DOUBLE THE P100,000.00 AS PRAYED FOR BY THE PRIVATE RESPONDENTS IN THEIR COMPLAINT AND IN GRANTING ACTUAL DAMAGES NOT SUPPORTED BY OFFICIAL RECEIPTS AND SPENT WAY BEYOND THE BURIAL OF THE DECEASED VICTIM.
- WHETHER OR NOT THE AFFIRMATION BY THE HONORABLE COURT OF APPEALS OF THE APPEALED DECISION OF THE REGIONAL TRIAL COURT GRANTING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES WHICH WERE NOT PROVED AND CONSIDERING THAT THERE IS NO FINDING OF BAD FAITH AND GROSS NEGLIGENCE ON THE PART OF THE PETITIONER WAS NOT ESTABLISHED, IS IN ACCORD WITH LAW AND JURISPRUDENCE.
- WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPEALED DECISION OF THE REGIONAL TRIAL COURT WHICH DISREGARDED THE APPELLANT'S TESTIMONIAL AND DOCUMENTARY EVIDENCE THAT IT HAS EXERCISED EXTRAORDINARY DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES, OR STATED DIFFERENTLY, WHETHER OR NOT THE AFFIRMATION BY THE COURT OF APPEALS OF THE APPEALED DECISION OF THE TRIAL COURT THAT IS CONTRARY TO LAW AND JURISPRUDENCE CONSTITUTES GRAVE ABUSE AND EXCESS OF JURISDICTION.[11]

We find the appealed decision to be in order.

First. Victory Liner, Inc. no longer questions the findings of the Regional Trial Court that Andres Malecndan was injured as a result of the gross negligence of its driver, Ricardo Joson, Jr. What petitioner now questions is the finding that it (petitioner) failed to exercise the diligence of a good father of the family in the selection and supervision of its employee. Petitioner argues,

With all due respect, the assignment of three inspectors to check and remind the drivers of petitioner Victory Liner of its policies in a two-and-a-half hour driving distance, the installation of tachometers to monitor the speed of the bus all throughout the trip, the periodic monitoring and checking of the trips from one station to another through a trip ticket from station to station, the regular periodic conducting of safety and defensive driving [training sessions] for its drivers are concrete and physical proofs of the formulated operating standards, the implementation and monitoring of the same, designed for the exercise of due diligence of a good

father of a family in the supervision of its employees.[12]

It explained that it did not present bus driver Joson, Jr. on the witness stands because he had been dismissed from the company after the incident, which it found was a breach in the company regulations. Petitioner blames private respondents for the death of their father, Andres Malecdan, who was already 75 years old, for allowing him to plough their field by himself.[13]

The contention has no merit.

Article 2176 provides:

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.

Article 2180 provides for the solidary liability of an employer for the quasi-delict committed by an employee. The responsibility of employers for the negligence of their employees in the performance of their duties is primary and, therefore, the injured party may recover from the employers directly, regardless of the solvency of their employees.[14] The rationale for the rule on vicarious liability has been explained thus:

What has emerged as the modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the tort of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large. Added to this is the makeweight argument that an employer who is held strictly liable is under the greatest incentive to be careful in the selection, instruction and supervision of his servants, and to take every precaution to see that the enterprise is conducted safely.[15]

Employers may be relieved of responsibility for the negligent acts of their employees acting within the scope of their assigned task only if they can show that "they observed all the diligence of a good father of a family to prevent damage." [16] For this purpose, they have the burden of proving that they have indeed exercised such diligence, both in the selection of the employee and in the supervision of the performance of his duties.[17]

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records.[18] With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof.[19] These facts must be shown by concrete proof, including documentary evidence.[20]

In the instant case, petitioner presented the results of Joson, Jr.'s written examination,[21] actual driving tests,[22] x-ray examination,[23] psychological examination,[24] NBI clearance,[25] physical examination,[26] hematology examination,[27] urinalysis,[28] student driver training,[29] shop training,[30] birth certificate,[31] high school diploma[32] and reports from the General Maintenance Manager and the Personnel Manager showing that he had passed all the tests and training sessions and was ready to work as a professional driver.[33] However, as the trial court noted, petitioner did not present proof that Joson, Jr. had nine years of driving experience.[34]

Petitioner also presented testimonial evidence that drivers of the company were given seminars on driving safety at least twice a year.[35] Again, however, as the trial court noted there is no record of Joson, Jr. ever attending such a seminar.[36] Petitioner likewise failed to establish the speed of its buses during its daily trips or to submit in evidence the trip tickets, speed meters and reports of field inspectors. The finding of the trial court that

petitioner's bus was running at a very fast speed when it overtook the Dalin bus and hit the deceased was not disputed by petitioner. For these reasons, we hold that the trial court did not err in finding petitioner to be negligent in the supervision of its driver Joson, Jr.

Second. To justify an award of actual damages, there should be proof of the actual amount of loss incurred in connection with the death, wake or burial of the victim.[37] We cannot take into account receipts showing expenses incurred some time after the burial of the victim, such as expenses relating to the 9th day, 40th day and 1st year death anniversaries.[38] In this case, the trial court awarded P88,339.00 as actual damages. While these were duly supported by receipts, these included the amount of P5,900.00, the cost of one pig which had been butchered for the 9th day death anniversary of the deceased. This item cannot be allowed. We, therefore, reduce the amount of actual damages to P82,439.00.00. The award of P200,000.00 for moral damages should likewise be reduced. The trial court found that the wife and children of the deceased underwent "intense moral suffering" as a result of the latter's death.[39] Under Art. 2206 of the Civil Code, the spouse, legitimate children and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Under the circumstances of this case an award of P100,000.00 would be in keeping with the purpose of the law in allowing moral damages.[40]

On the other hand, the award of P50,000.00 for indemnity is in accordance with current rulings of the Court.[41]

Art. 2231 provides that exemplary damages may be recovered in cases involving quasi-delicts if the defendant acted with gross negligence. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[42] In this case, petitioner's driver Joson, Jr. was grossly negligent in driving at such a high speed along the national highway and overtaking another vehicle which had stopped to allow a pedestrian to cross. Worse, after the accident, Joson, Jr. did not stop the bus to help the victim. Under the circumstances, we believe that the trial court's award of P50,000.00 as exemplary damages is proper.

Finally, private respondents are entitled to attorney's fees. Under Art. 2008 of the Civil Code, attorney's fees may be recovered when, as in the instant case, exemplary damages are awarded. In the recent case of *Metro Manila Transit Corporation v. Court of Appeals*,[43] we held an award of P50,000.00 as attorney's fees to be reasonable. Hence, private respondents are entitled to attorney's fees in that amount.

WHEREFORE, the decision of the Court of Appeals, dated January 17, 2002, is hereby **AFFIRMED**, with the **MODIFICATION** that petitioner Victory Liner, Inc. is ordered to pay the following amounts to the respondent heirs of Andres Malecdan:

- Death indemnity in the amount of Fifty Thousand Pesos (P50,000.00);
- Actual damages in the amount of Eighty-Two Thousand Four Hundred Thirty-Nine Pesos (P82,439.00);
- Moral damages in the amount of One Hundred Thousand Pesos (P100,000.00);
- Exemplary damages in the amount of Fifty Thousand Pesos (P50,000.00);
- Attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00); and
- Costs of suit.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

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- [1] Per Justice Martin S. Villarama, Jr., with the concurrence of Justices Conchita Carpio-Morales and Sergio L. Pestaño.
- [2] Per Judge Antonio M. Esteves.
- [3] Certificate of Death, Records, p. 409
- [4] TSN (Virgilio Lorena) pp. 4-8, July 29, 1997.
- [5] Id., pp. 8-10.
- [6] id., p. 10.
- [7] Exhs. C and D; Records, pp. 406-407.
- [8] Records, pp. 1-5.
- [9] RTC Decision dated July 17, 2000, p. 14; Rollo, p. 50.
- [10] CA Decision dated Jan. 17, 2002; id., pp. 26-33.
- [11] Petition for review, pp. 7-8; id., pp. 10-11.
- [12] Id., p. 17; id., p. 20.
- [13] Id., pp. 17-19; Records, pp. 20-22.
- [14] Metro Manila Transit Corporation v. Court of Appeals, 298 SCRA 495 (1998); Philtranco Service Enterprises, Inc. v. Court of Appeals, 298 SCRA 495 (1997).
- [15] WILLIAM L. PROSSER AND ROBERT E. KEETON, THE LAW OF TORTS 500-501 (1989), cited in Metro Manila Transit Corporation v. Court of Appeals, 359 Phil. 18 (1998).
- [16] Pestaño v. Sumayang, 346 SCRA 870 (2000); Bahia v. Litonjua, 30 Phil. 624 (1915).
- [17] Metro Manila Transit Corporation v. Court of Appeals, 298 SCRA 495 (1998); Baliwag Transit, Inc. v. Court of Appeals, 262 SCRA 230 (1996); China Airlines, Ltd. v. Court of Appeals, 185 SCRA 449 (1990); Pantranco North Express, Inc. v. Baesa, 179 SCRA 384 (1989); Umali v. Bacani, 69 SCRA 623, (1976); Lilius v. Manila Railroad Company, 59 Phil. 758 (1934).
- [18] Campo v. Camarote, 100 Phil. 459 (1956).
- [19] Metro Manila Transit Corporation v. Court of Appeals, 223 SCRA 521 (1993).
- [20] Metro Manila Transit Corporation v. Court of Appeals, 298 SCRA 495 (1998); Central Taxicab Corporation v. Ex-Meralco Employees Transportation Corporation, 54 O.G. 7415 (1958).
- [21] Exh. 3; Records, p. 505.
- [22] Exh. 4; Id., p. 506.

- [23] Exh. 10; id., p. 512.
- [24] Exh. 5; id., p. 507.
- [25] Exh. 8; id., p. 510.
- [26] Exh. 9; id., p. 511.
- [27] Exh. 11; id., p. 513.
- [28] Exh. 12; id., p. 514.
- [29] Exh. 14; id., p. 516.
- [30] Exh. 15; id., p. 518.
- [31] Exh. 6, id., p. 508.
- [32] Exh. 7, id., p. 509.
- [33] Exhs. 16 and 17; id., pp. 519-520.
- [34] RTC Decision, pp. 10-11; Rollo, pp. 46-47.
- [35] TSN (Virgilio Punzalan), pp. 7-8, February 3, 1999.
- [36] RTC Decision, p. 11; Rollo, p. 47.
- [37] *People v. Guillermo*, 302 SCRA 257 (1999).
- [38] *People v. Mangahas*, 311 SCRA 384 (1999).
- [39] RTC Decision, p. 13; Records, p. 49.
- [40] See *Fortune Express, Inc. v. Court of Appeals*, 305 SCRA 14 (1999).
- [41] *Fortune Express, Inc. v. Court of Appeals*, 305 SCRA 14 (1999); *Negros Navigation Co., Inc. v. Court of Appeals*, 281 SCRA 534 (1997); *Philtranco Service Enterprises, Inc. v. Court of Appeals*, 273 SCRA 562 (1997).
- [42] *Macenas v. Court of Appeals*, 180 SCRA 83 (1989).
- [43] 298 SCRA 495 (1998).**

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