

CORNELIO LAMPESA and DARIO COPSIYAT, Petitioners, vs. DR. JUAN DE VERA, JR., FELIX RAMOS and MODESTO TOLLAS, Respondents.

G.R. No. 155111. February 14, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks the reversal of the Decision[1] dated August 21, 2002 of the Court of Appeals in CA-G.R. CV No. 49778 which had affirmed the Decision[2] dated March 22, 1995 of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57, finding petitioners Cornelio Lampesa and Dario Copsiyat liable for damages on account of the injury sustained by respondent, Dr. Juan De Vera, Jr.

The antecedent facts, as found by the appellate court, are as follows:

On December 28, 1988, De Vera, Jr. boarded a passenger jeepney[3] bound for Baguio City driven by respondent Modesto Tollas. Upon reaching the Km. 4 marker of the national highway, the jeepney came to a complete stop to allow a truck,[4] then being driven by Dario Copsiyat, to cross the path of the jeepney in order to park at a private parking lot on the right side of the road. As Tollas began to maneuver the jeepney slowly along its path, the truck, which had just left the pavement, suddenly started to slide back towards the jeepney until its rear left portion hit the right side of the jeepney. De Vera, Jr., who was seated in the front passenger seat, noticed his left middle finger was cut off as he was holding on to the handle of the right side of the jeepney. He asked Tollas to bring him immediately to the hospital. The Medical Certificate[5] dated June 19, 1989, described De Vera, Jr.'s amputated left middle finger as follows:

Neuroma, proximal phalange left middle finger OPERATION PERFORMED: Ray amputation middle finger left...[6]

P/Cpl. Arthur A. Bomogao of the Benguet Integrated National Police investigated and recorded the incident in his Police Investigation Report[7] dated January 17, 1989.

The defense, for its part, presented the following version of the incident: After delivering a load of vegetables, truck owner Lampesa instructed his driver, Copsiyat, to park the truck in the parking lot across the highway. While the rear of the truck was still on the pavement of the highway, an approaching passenger jeepney sideswiped the rear portion of the truck. This resulted in the dismemberment of De Vera, Jr.'s left middle finger, according to the defense.

Lampesa offered P5,000 to De Vera, Jr. as a gesture of humanitarian support, but the latter demanded P1 million although this amount was later lowered to P75,000. The parties failed to settle amicably; thus, De Vera, Jr. filed an action for damages[8] against Lampesa, Copsiyat, Ramos and Tollas, as the truck owner, truck driver, jeepney owner/operator and jeepney driver, respectively.

The trial court found driver Copsiyat negligent in the operation of his truck and ruled that his negligence was the proximate cause of the injuries suffered by De Vera, Jr. It also ruled that Lampesa did not exercise due diligence

in the selection and supervision of his driver as required under Articles 2176[9] and 2180[10] of the Civil Code. The fallo of the decision reads:

WHEREFORE, judgment is hereby rendered:

1. Ordering Dario Copsiyat and Cornelio F. Lampesa, jointly and solidarily to pay the plaintiff the sum of P75,000.00 as moral damages; P22,000.00 as actual damages; and P15,000.00 as attorney's fees plus the costs of suit.
2. The counterclaim and cross-claim of defendant Lampesa and Copsiyat and the counterclaim and counter-cross-claim of defendants Ramos and Tollas are hereby dismissed.

SO ORDERED.[11]

Upon review, the Court of Appeals upheld the trial court's findings of negligence on the part of Copsiyat and Lampesa. The dispositive portion of the decision reads:

WHEREFORE, the questioned Decision, dated March 22, 1995, of the Regional Trial Court of Pangasinan, Branch 57, in Civil Case No. SCC-1506, is hereby AFFIRMED.

SO ORDERED.[12]

Hence, the instant petition, raising the following as issues:

I.

WHO BETWEEN THE TWO (2) DRIVERS (COPSIYAT WHO WAS THE ELF TRUCK DRIVER AND TOLLAS FOR THE PASSENGER JEEP) WAS NEGLIGENT?

II.

GRANTING THAT COPSIYAT WAS ALSO NEGLIGENT, WHETHER OR NOT THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES ARE JUSTIFIED; AND

III.

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN THE APPRECIATION OF THE EVIDENCE.[13]

Simply put, the issues for our resolution are: (1) Did the Court of Appeals err in affirming the trial court's ruling that petitioners are liable for the injury sustained by De Vera, Jr.? and (2) Did it err in awarding moral damages and attorney's fees?

Petitioners insist that it was Tollas, the jeepney driver, who was negligent. They maintain that Tollas should have first allowed the truck to park as he had a clear view of the scenario, compared to Copsiyat, the truck driver, who had a very limited view of the back of the truck. Lampesa also avers he did his legal duty in the selection and supervision of Copsiyat as his driver. He alleges that before hiring Copsiyat, he asked the latter if he had a professional driver's license.

For their part, respondents adopt the findings of the trial and appellate courts. They contend that it was Copsiyat who was negligent in driving the truck and the testimony of De Vera, Jr. on this matter was more than sufficient to prove the fact. De Vera, Jr. also contends that petitioners are liable for moral damages and attorney's fees under Articles 2217[14] and 2208[15] of the Civil Code.

Considering the contentions of the parties, in the light of the circumstances in this case, we are in agreement that

the petition lacks merit.

Article 2176 of the Civil Code provides that 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 quasi-delict. Whether a person is negligent or not is a question of fact, which we cannot pass upon in a petition for review on certiorari, as our jurisdiction is limited to reviewing errors of law.[16]

In this case, both the trial and the appellate courts found Copsiyat negligent in maneuvering the truck and ruled that his negligence was the proximate cause of the injury sustained by De Vera, Jr. Lampesa was also held accountable by both courts because he failed to exercise due diligence in the supervision of his driver. This Court is not bound to weigh all over again the evidence adduced by the parties, particularly where the findings of both the trial court and the appellate court on the matter of petitioners' negligence coincide. The resolution of factual issues is a function of the trial court, whose findings on these matters are, as a general rule, binding on this Court more so where these have been affirmed by the Court of Appeals.[17]

Once negligence on the part of the employee is established, a presumption instantly arises that the employer was negligent in the selection and/or supervision of said employee.[18] To rebut this presumption, the employer must present adequate and convincing proof that he exercised care and diligence in the selection and supervision of his employees.

Lampesa claims he did his legal duty as an employer in the selection and supervision of Copsiyat. But the record is bare on this point. It lacks any showing that Lampesa did so. Admitting *arguendo* that Copsiyat did show his professional license when he applied for the job of truck driver, Lampesa should not have been satisfied by the mere possession of a professional driver's license by Copsiyat. As an employer, Lampesa was duty bound to do more. He should have carefully examined Copsiyat's qualifications, experiences and record of service, if any.[19] Lampesa must also show that he exercised due supervision over Copsiyat after his selection. But all he had shown on record were bare allegations unsubstantiated by evidence. Having failed to exercise the due diligence required of him as employer, Lampesa cannot avoid solidary liability for the tortuous act committed by his driver, Copsiyat.

On a final note, petitioners' liability for moral damages and attorney's fees cannot now be questioned for failure of petitioners to raise it before the Court of Appeals. It is a well-entrenched rule that issues not raised below cannot be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play and justice.[20] Moreover, the award of moral damages in this case is justifiable under Article 2219 (2)[21] of the Civil Code, which provides for said damages in cases of quasi-delicts causing physical injuries.[22] The award for attorney's fees is also proper under Article 2208 (2)[23] of the Civil Code, considering that De Vera, Jr. was compelled to litigate when petitioners ignored his demand for an amicable settlement of his claim.[24]

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated August 21, 2002 of the Court of Appeals in CA-G.R. CV No. 49778 is AFFIRMED. Costs against the petitioners.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 27-34. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Eubulo G. Verzola and Danilo B. Pine concurring.

[2] CA rollo, pp. 50-56. Penned by Presiding Judge Bienvenido R. Estrada.

[3] Rollo, p. 27. Bearing license plate number AVC-471.

[4] Id. Bearing license plate number PGU-160.

[5] Exhibit "C," folder of exhibits for the plaintiff, p. 4.

[6] Id.

[7] Exhibit "D-1," id. at 6.

[8] Records, Vol. 1, pp.1-6.

[9] ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[10] 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

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

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.

[11] CA rollo, pp. 55-56.

[12] Rollo, pp. 33-34.

[13] Id. at 178.

[14] ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[15] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;

- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[16] Yambao v. Zuñiga, G.R. No. 146173, December 11, 2003, 418 SCRA 266, 271.

[17] Id.

[18] Syki v. Begasa, G.R. No. 149149, October 23, 2003, 414 SCRA 237, 240.

[19] See Yambao v. Zuñiga, supra note 16 at 273-274.

[20] Villanueva v. Salvador, G.R. No. 139436, January 25, 2006, 480 SCRA 39, 52.

[21] ART. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(2) Quasi-delicts causing physical injuries;

x x x x

[22] Quezon City Government v. Dacara, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 254.

[23] ART. 2208, supra note 15.

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

[24] See Laguna Tayabas Bus Co. v. Tiongson, et al., No. L-22143, April 30, 1966, 16 SCRA 940, 947.

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