

**PHILIPPINE NATIONAL RAILWAYS AND VIRGILIO J. BORJA,
PETITIONERS, VS. COURT OF APPEALS (SECOND DIVISION),
CORAZON C. AMORES, MA. EMILIE A. MOJICA, CECILE C. SISON,
DINO C. AMORES...**

G.R. NO. 157658. October 15, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 54906 which reversed the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 28, in Civil Case No. 92-61987.

The factual antecedents are as follows:

In the early afternoon of April 27, 1992, Jose Amores (Amores) was traversing the railroad tracks in Kahilum II Street, Pandacan, Manila. Before crossing the railroad track, he stopped for a while then proceeded accordingly.[3] Unfortunately, just as Amores was at the intersection, a Philippine National Railways' (PNR) train with locomotive number T-517 turned up and collided with the car.[4]

At the time of the mishap, there was neither a signal nor a crossing bar at the intersection to warn motorists of an approaching train. Aside from the railroad track, the only visible warning sign at that time was the defective standard signboard "STOP, LOOK and LISTEN" wherein the sign "Listen" was lacking while that of "Look" was bent.[5] No whistle blow from the train was likewise heard before it finally bumped the car of Amores.[6] After impact, the car was dragged about ten (10) meters beyond the center of the crossing.[7] Amores died as a consequence thereof.

On July 22, 1992, the heirs of Amores, consisting of his surviving wife and six children, herein respondents, filed a Complaint for Damages[8] against petitioners PNR and Virgilio J. Borja (Borja), PNR's locomotive driver at the time of the incident, before the RTC of Manila. The case was raffled to Branch 28 and was docketed as Civil Case No. 92-61987. In their complaint, respondents averred that the train's speedometer was defective, and that the petitioners' negligence was the proximate cause of the mishap for their failure to take precautions to prevent injury to persons and property despite the dense population in the vicinity. They then prayed for actual and moral damages, as well as attorney's fees.[9]

In their Answer,[10] the petitioners denied the allegations, stating that the train was railroad-worthy and without any defect. According to them, the proximate cause of the death of Amores was his own carelessness and negligence, and Amores wantonly disregarded traffic rules and regulations in crossing the railroad tracks and trying to beat the approaching train. They admitted that there was no crossing bar at the site of the accident because it was merely a barangay road.[11] PNR stressed that it exercised the diligence of a good father of a

family in the selection and supervision of the locomotive driver and train engineer, Borja, and that the latter likewise used extraordinary diligence and caution to avoid the accident. Petitioners further asserted that respondents had the last clear chance to avoid the accident but recklessly failed to do so.

After trial on the merits, on August 22, 1996, the RTC rendered judgment in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered dismissing the complaint of the plaintiffs and the defendants' counterclaim.

The costs shall be halved and paid equally by the parties.

The counsel for the defendants is hereby ordered to inform this court who is the legal representative of the deceased defendant, Virgilio Borja, within ten (10) days from receipt of a copy of this decision.

SO ORDERED.[12]

The RTC rationalized that the proximate cause of the collision was Amores' fatal misjudgment and the reckless course of action he took in crossing the railroad track even after seeing or hearing the oncoming train.

On appeal, the CA reversed the RTC decision, as follows:

WHEREFORE, the assailed Decision of the Regional Trial Court of Manila, Branch 28 is hereby REVERSED. The defendants PNR and the estate of Virgilio J. Borja are jointly and severally liable to pay plaintiffs the following:

- 1) The amount of P122,300.00 for the cost of damage to the car; and,
- 2) The amount of P50,000 as moral damages.

For lack of official receipts for funeral expenses and specimen of the last pay slip of the deceased, the claim for reimbursement of funeral expenses and claim for payment of support is hereby DENIED for lack of basis. Costs against Defendants.

SO ORDERED.[13]

In reversing the trial court's decision, the appellate court found the petitioners negligent. The court based the petitioners' negligence on the failure of PNR to install a semaphore or at the very least, to post a flagman, considering that the crossing is located in a thickly populated area. Moreover, the signboard "Stop, Look and Listen" was found insufficient because of its defective condition as described above. Lastly, no negligence could be attributed to Amores as he exercised reasonable diligence in crossing the railroad track.

Aggrieved by this reversal, the petitioners filed the present petition for review on certiorari, raising the following grounds:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING ITS DECISION REVERSING THE DECISION OF THE REGIONAL TRIAL COURT OF MANILA BRANCH 28, IN NOT TAKING INTO CONSIDERATION THE PROVISION OF SECTION 42, R.A. 4136 OF THE LAND TRANSPORTATION AND TRAFFIC CODE.

II

THE DECISION OF THE COURT OF APPEALS IS CONTRARY TO THE EVIDENCE ON RECORD ADDUCED IN THE TRIAL ON THE MERIT IN CIVIL CASE NO. 92-61987.[14]

The petitioners insist that Amores must have heard the train's whistle and heeded the warning but, noting that the train was still a distance away and moving slowly, he must have calculated that he could beat it to the other side of the track before the train would arrive at the intersection. The petitioners likewise add that the train was railroad-worthy and that its defective speedometer did not affect the train's operation. Lastly, they insist that evidence showed sufficient warning signs strategically installed at the crossing to alert both motorists and pedestrians.

Respondents, on the other hand, argue that the cause of the accident was petitioners' carelessness, imprudence and laxity in failing to provide a crossing bar and keeper at the Kahilum II railway intersection. Considering that Kahilum II Street is in the middle of a thickly populated squatters' area, and many pedestrians cross the railroad track, notwithstanding the fact that it is a public street and a main thoroughfare utilized in going to Herran Street, the presence of adequate warning signals would have prevented the untimely death of Amores. Another crucial point raised by the respondents is the manner in which Borja applied the brakes of the train only when the locomotive was already very near Amores' car, as admitted by witness Querimit. Finally, respondents claim that Borja's failure to blow the locomotive's horn, pursuant to the usual practice of doing the same 100 meters before reaching the Kahilum II crossing point is an earmark of recklessness on the part of the petitioners.

The petition must fail.

The only issue to be resolved in the present case is whether the appellate court was correct in ascribing negligence on the part of the petitioners. It was ascertained beyond quandary that the proximate cause of the collision is the negligence and imprudence of the petitioner PNR and its locomotive driver, Borja, in operating the passenger train.

As the action is predicated on negligence, the relevant provision is Article 2176 of the New Civil Code, which states 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 was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter.

We have thoroughly reviewed the records of the case and we find no cogent reason to reverse the appellate court's decision. Negligence has been defined as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury." [15] Using the aforementioned philosophy, it may be reliably concluded that there is no hard and fast rule whereby such degree of care and vigilance is calibrated; it is dependent upon the circumstances in which a person finds himself. All that the law requires is that it is perpetually compelling upon a person to use that care and diligence expected of sensible men under comparable circumstances. [16]

We hold that the petitioners were negligent when the collision took place. The transcript of stenographic notes reveals that the train was running at a fast speed because notwithstanding the application of the ordinary and emergency brakes, the train still dragged the car some distance away from the point of impact. Evidence likewise unveils the inadequate precautions taken by petitioner PNR to forewarn the public of the impending danger. Aside from not having any crossing bar, no flagman or guard to man the intersection at all times was posted on the day of the incident. A reliable signaling device in good condition, not just a dilapidated "Stop, Look and Listen" signage because of many years of neglect, is needed to give notice to the public. It is the responsibility of the railroad company to use reasonable care to keep the signal devices in working order. Failure to do so would be an indication of negligence.

As held in the case of *Philippine National Railway v. Brunty*, [17] it may broadly be stated that railroad companies

owe to the public a duty of exercising a reasonable degree of care to avoid injury to persons and property at railroad crossings, which duties pertain both to the operation of trains and to the maintenance of the crossings. Moreover, every corporation constructing or operating a railway shall make and construct at all points where such railway crosses any public road, good, sufficient, and safe crossings, and erect at such points, at sufficient elevation from such road as to admit a free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains.[18] The failure of the PNR to put a cross bar, or signal light, flagman or switchman, or semaphore is evidence of negligence and disregard of the safety of the public, even if there is no law or ordinance requiring it, because public safety demands that said device or equipment be installed.

The petitioners insist that a train has a right-of-way in a railroad crossing under the existing laws. They derive their theory from Section 42 (d), Article III of R.A. 4136, otherwise known as the Land Transportation and Traffic Code, which states that:

The driver of a vehicle upon a highway shall bring to a full stop such vehicle before traversing any “through highway” or railroad crossing: Provided, That when it is apparent that no hazard exists, the vehicle may be slowed down to five miles per hour instead of bringing it to a full stop.

They claim that motorists are enjoined by law to stop, look and listen before crossing railroad tracks and that a heavier responsibility rests upon the motorists in avoiding accidents at level crossings.

It is true that one driving an automobile must use his faculties of seeing and hearing when nearing a railroad crossing. However, the obligation to bring to a full stop vehicles moving in public highways before traversing any “through street” only accrues from the time the said “through street” or crossing is so designated and sign-posted. From the records of the case, it can be inferred that Amores exercised all the necessary precautions required of him as to avoid injury to himself and to others. The witnesses’ testimonies showed that Amores slackened his speed, made a full stop, and then proceeded to cross the tracks when he saw that there was no impending danger to his life. Under these circumstances, we are convinced that Amores did everything, with absolute care and caution, to avoid the collision.

It is settled that every person or motorist crossing a railroad track should use ordinary prudence and alertness to determine the proximity of a train before attempting to cross. We are persuaded that the circumstances were beyond the control of Amores for no person would sacrifice his precious life if he had the slightest opportunity to evade the catastrophe. Besides, the authority in this jurisdiction is that the failure of a railroad company to install a semaphore or at the very least, to post a flagman or watchman to warn the public of the passing train amounts to negligence.[19]

In view of the foregoing, We will now discuss the liability of petitioner PNR. Article 2180[20] of the New Civil Code discusses the liability of the employer once negligence or fault on the part of the employee has been established. The employer is actually liable on the assumption of *juris tantum* that the employer failed to exercise *diligentissimi patris familias* in the selection and supervision of its employees. The liability is primary and can only be negated by showing due diligence in the selection and supervision of the employee, a factual matter that has not been demonstrated.[21] Even the existence of hiring procedures and supervisory employees cannot be incidentally invoked to overturn the presumption of negligence on the part of the employer.[22]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated March 31, 2003 in CA-G.R. CV No. 54906 is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Buenaventura J. Guerrero and Mariano C. Del Castillo, concurring; rollo, pp. 37-43.

[2] Penned by Judge Eudoxia T. Gualberto; rollo, pp. 44-58.

[3] TSN, March 4, 1994, pp. 6, 10.

[4] Rollo, p. 37.

[5] Id. at 41.

[6] TSN, March 4, 1994, pp. 17-18..

[7] Rollo, p. 40.

[8] Records, pp. 1-5.

[9] Id. at 4.

[10] Id. at 14-17.

[11] TSN, July 3, 1995, p. 23.

[12] Rollo, p. 58.

[13] Id. at 42.

[14] Id. at 15.

[15] *Corliss v. The Manila Railroad Company*, 137 Phil. 101, 107.

[16] *Cusi v. Philippine National Railways*, No. L-29889, 31 May 1979, 90 SCRA 357, 362.

[17] G.R. No. 169891, November 2, 2006, 506 SCRA 685, 699 citing 37 Am.Jur. PO F.2d 439.

[18] Id.

[19] *Phil. National Railways v. Intermediate Appellate Court*, G.R. No. 70547, 22 January 1993, 271 SCRA 401, 416, citing *Lilius v. Manila Railroad Company*, 59 Phil. 758 (1934).

[20] 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.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

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.

The State is responsible in like manner when it acts through a special agent, but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

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.

[21] Light Rail Transit Authority v. Navidad, G.R. No. 145804, 6 February 2003, 397 SCRA 75, 82.

[22] Fabre, Jr. v. Court of Appeals, G.R. No. 111127, 26 July 1996, 259 SCRA 426, 434-435, citing Metro Manila Transit Corp. v. Court of Appeals, 233 SCRA 521 (1993), Campo v. Camarote, 100 Phil 459 (1956).

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