

JOAQUINITA P. CAPILI, PETITIONER, VS. SPS. DOMINADOR CARDAÑA AND ROSALITA CARDAÑA, RESPONDENTS.

G.R. No. 157906. November 02, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review assailing the Decision[1] dated October 18, 2002 of the Court of Appeals in CA-G.R. CV. No. 54412, declaring petitioner liable for negligence that resulted in the death of Jasmin Cardaña, a school child aged 12, enrolled in Grade 6, of San Roque Elementary School, where petitioner is the principal. Likewise assailed is the Resolution[2] dated March 20, 2003 denying reconsideration.

The facts are as follows:

On February 1, 1993, Jasmin Cardaña was walking along the perimeter fence of the San Roque Elementary School when a branch of a caimito tree located within the school premises fell on her, causing her instantaneous death. Thus, her parents - Dominador and Rosalita Cardaña - filed a case for damages before the Regional Trial Court of Palo, Leyte against petitioner.

The Cardañas alleged in their complaint that even as early as December 15, 1992, a resident of the barangay, Eufonio Leros, reported on the possible danger the tree posed to passersby. Leros even pointed to the petitioner the tree that stood near the principal's office. The Cardañas averred that petitioner's gross negligence and lack of foresight caused the death of their daughter.

Petitioner denied the accusation and said that at that time Leros had only offered to buy the tree. She also denied knowing that the tree was dead and rotting. To prove her point, she presented witnesses who attested that she had brought up the offer of Leros to the other teachers during a meeting on December 15, 1992 and assigned Remedios Palaña to negotiate the sale.

In a Decision[3] dated February 5, 1996, the trial court dismissed the complaint for failure of the respondents to establish negligence on the part of the petitioner.

On appeal, the Court of Appeals reversed the trial court's decision. The appellate court found the appellee (herein petitioner) liable for Jasmin's death, as follows:

Foregoing premises considered, the instant appeal is GRANTED. Appellee Joaquinita Capili is hereby declared liable for negligence resulting to the death of Jasmin D. Cardaña. She is hereby ordered to indemnify appellants, parents of Jasmin, the following amounts:

1. For the life of Jasmin D. Cardaña

P50,000.00;

2. For burial expenses

15,010.00;

3. For moral damages

50,000.00;

4. For attorney's fees and litigation expenses

10,000.00.

SO ORDERED.[4]

Petitioner's motion for reconsideration was denied. Petitioner now comes before us submitting the following issues for our resolution:

I

WHETHER OR NOT THE COURT OF APPEALS VIS-À-VIS THE SET OF FACTS STATED IN THE CHALLENGED DECISION, ERRED IN FINDING THE PETITIONER NEGLIGENT AND THEREFORE LIABLE FOR DAMAGES UNDER ARTICLE 2206 OF THE CIVIL CODE AND IN ORDERING THE PETITIONER TO PAY DAMAGES TO THE RESPONDENTS; AND

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[5]

On the other hand, respondents posit the following issue:

WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS, TWELFTH DIVISION, IN CA G.R. CV. NO. 54412 PROMULGATED ON OCTOBER 18, 2002 ... SHOULD BE AFFIRMED AND RESPECTED, THUS REMAIN UNDISTURBED.[6]

Primarily, the issue is whether petitioner is negligent and liable for the death of Jasmin Cardaña.

Petitioner asserts that she was not negligent about the disposal of the tree since she had assigned her next-in-rank, Palaña, to see to its disposal; that despite her physical inspection of the school grounds, she did not observe any indication that the tree was already rotten nor did any of her 15 teachers inform her that the tree was already rotten;[7] and that moral damages should not be granted against her since there was no fraud nor bad faith on her part.

On the other hand, respondents insist that petitioner knew that the tree was dead and rotting, yet, she did not exercise reasonable care and caution which an ordinary prudent person would have done in the same situation.

To begin, we have to point out that whether petitioner was negligent or not is a question of fact which is generally not proper in a petition for review, and when this determination is supported by substantial evidence, it becomes conclusive and binding on this Court.[8] However, there is an exception, that is, when the findings of the Court of Appeals are incongruent with the findings of the lower court.[9] In our view, the exception finds application in the present case.

The trial court gave credence to the claim of petitioner that she had no knowledge that the tree was already dead and rotting and that Lerios merely informed her that he was going to buy the tree for firewood. It ruled that petitioner exercised the degree of care and vigilance which the circumstances require and that there was an absence of evidence that would require her to use a higher standard of care more than that required by the attendant circumstances.[10] The Court of Appeals, on the other hand, ruled that petitioner should have known of

the condition of the tree by its mere sighting and that no matter how hectic her schedule was, she should have had the tree removed and not merely delegated the task to Palaña. The appellate court ruled that the dead caimito tree was a nuisance that should have been removed soon after petitioner had chanced upon it.[11]

A negligent act is an inadvertent act; it may be merely carelessly done from a lack of ordinary prudence and may be one which creates a situation involving an unreasonable risk to another because of the expectable action of the other, a third person, an animal, or a force of nature. A negligent act is one from which an ordinary prudent person in the actor's position, in the same or similar circumstances, would foresee such an appreciable risk of harm to others as to cause him not to do the act or to do it in a more careful manner.[12]

The probability that the branches of a dead and rotting tree could fall and harm someone is clearly a danger that is foreseeable. As the school principal, petitioner was tasked to see to the maintenance of the school grounds and safety of the children within the school and its premises. That she was unaware of the rotten state of a tree whose falling branch had caused the death of a child speaks ill of her discharge of the responsibility of her position.

In every tort case filed under Article 2176 of the Civil Code, plaintiff has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.[13]

The fact, however, that respondents' daughter, Jasmin, died as a result of the dead and rotting tree within the school's premises shows that the tree was indeed an obvious danger to anyone passing by and calls for application of the principle of *res ipsa loquitur*.

The doctrine of *res ipsa loquitur* applies where (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[14]

The effect of the doctrine of *res ipsa loquitur* is to warrant a presumption or inference that the mere falling of the branch of the dead and rotting tree which caused the death of respondents' daughter was a result of petitioner's negligence, being in charge of the school.

In the case of *D.M. Consunji, Inc. v. Court of Appeals*,[15] this Court held:

...As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.

The concept of *res ipsa loquitur* has been explained in this wise:

While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the

defendant, that the injury arose from or was caused by the defendant's want of care.

The procedural effect of the doctrine of *res ipsa loquitur* is that petitioner's negligence is presumed once respondents established the requisites for the doctrine to apply. Once respondents made out a *prima facie* case of all requisites, the burden shifts to petitioner to explain. The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances a disputable presumption, such as that of due care or innocence, may outweigh the inference.[16]

Was petitioner's explanation as to why she failed to have the tree removed immediately sufficient to exculpate her?

As the school principal, petitioner was tasked to see to the maintenance of the school grounds and safety of the children within the school and its premises. That she was unaware of the rotten state of the tree calls for an explanation on her part as to why she failed to be vigilant.

Petitioner contends she was unaware of the state of the dead and rotting tree because Lerios merely offered to buy the tree and did not inform her of its condition. Neither did any of her teachers inform her that the tree was an imminent danger to anyone. She argues that she could not see the immediate danger posed by the tree by its mere sighting even as she and the other teachers conducted ground inspections. She further argues that, even if she should have been aware of the danger, she exercised her duty by assigning the disposition of the tree to another teacher.

We find petitioner's explanation wanting. As school principal, petitioner is expected to oversee the safety of the school's premises. The fact that she failed to see the immediate danger posed by the dead and rotting tree shows she failed to exercise the responsibility demanded by her position.

Moreover, even if petitioner had assigned disposal of the tree to another teacher, she exercises supervision over her assignee.[17] The record shows that more than a month had lapsed from the time petitioner gave instruction to her assistant Palaña on December 15, 1992, to the time the incident occurred on February 1, 1993. Clearly, she failed to check seasonably if the danger posed by the rotting tree had been removed. Thus, we cannot accept her defense of lack of negligence.

Lastly, petitioner questions the award of moral damages. Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219 of the Civil Code.[18] However, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive.[19] Under the circumstances, we have to concede that petitioner was not motivated by bad faith or ill motive vis-à-vis respondents' daughter's death. The award of moral damages is therefore not proper.

In line with applicable jurisprudence, we sustain the award by the Court of Appeals of P50,000 as indemnity for the death of Jasmin,[20] and P15,010 as reimbursement of her burial expenses.[21]

WHEREFORE, the petition is DENIED. The Decision dated October 18, 2002 and the Resolution dated March 20, 2003, of the Court of Appeals in CA-G.R. CV. No. 54412 are AFFIRMED with MODIFICATION such that the award of moral damages is hereby deleted.

Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, and Velasco, JR., JJ., concur.

Tinga, J., on leave.

[1] Rollo, pp. 34-40.

[2] Id. at 53.

[3] CA rollo, pp. 67-73.

[4] Rollo, p. 39.

[5] Id. at 152.

[6] Id. at 169.

[7] Id. at 156.

[8] Heirs of Simeon Borlado v. Court of Appeals, G.R. No. 114118, August 28, 2001, 363 SCRA 753, 756.

[9] See Vera Cruz v. Calderon, G.R. No. 160748, July 14, 2004, 434 SCRA 534, 538-539.

[10] Rollo, pp. 192-193.

[11] Id. at 11-12.

[12] 65 C.J.S. § 1(14), p. 462.

[13] Child Learning Center, Inc. v. Tagorio, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 242.

[14] Id. at 244.

[15] G.R. No. 137873, April 20, 2001, 357 SCRA 249, 257-258 citing 57B Am Jur 2d, Negligence §1819.

[16] Id. at 260.

[17] See Panuncio v. Icaro-Velasco, A.M. No. P-98-1279, October 7, 1998, 297 SCRA 159, 161.

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

[19] Ace Haulers Corporation v. Court of Appeals, G.R. No. 127934, August 23, 2000, 338 SCRA 572, 580-581.

[20] See San Miguel Corporation v. Heirs of Sabiniano Inguito, G.R. No. 141716, July 4, 2002, 384 SCRA 87, 104.

[21] See People v. Alcantara, G.R. No. 157669, April 14, 2004, 427 SCRA 673, 684.

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