

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. HON. COURT OF APPEALS, RODRIGO ARNAIZ,
REGINA LATAGAN, RICARDO GENERALAO AND PAMPANGA SUGAR
DEVELOPMENT COMPANY, IN...**

G.R. NO. 159270. August 22, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 47699 affirming, with modification, the decision of the Regional Trial Court (RTC) of Manila in Civil Case No. 93-64803.

The Antecedents

Pampanga Sugar Development Company, Inc. (PASUDECO) transports sugarcane from Mabalacat and Magalang, Pampanga. When the Mount Pinatubo eruption of 1991 heavily damaged the national bridges along Abacan-Angeles and Sapang Maragul via Magalang, Pampanga, it requested permission from the Toll Regulatory Board (TRB) for its trucks to enter and pass through the North Luzon Expressway (NLEX) via Dau-Sta. Ines from Mabalacat, and via Angeles from Magalang, and exit at San Fernando going to its milling factory.[2] The TRB furnished the Philippine National Construction Corporation (PNCC) (the franchisee that operates and maintains the toll facilities in the North and South Luzon Toll Expressways) with a copy of the said request for it to comment thereon.[3]

On November 5, 1991, TRB and PASUDECO entered into a Memorandum of Agreement[4] (MOA), where the latter was allowed to enter and pass through the NLEX on the following terms and conditions:

- PASUDECO trucks should move in convoy;
- Said trucks will stay on the right lane;
- A vehicle with blinking lights should be assigned at the rear end of the convoy with a sign which should read as follows: Caution: CONVOY AHEAD!!!;
- Tollway safety measures should be properly observed;
- Accidents or damages to the toll facilities arising out of any activity related to this approval shall be the responsibility of PASUDECO;
- PASUDECO shall be responsible in towing their stalled trucks immediately to avoid any inconvenience to the other motorists;
- This request will be in force only while the national bridges along Abacan-Angeles and Sapang Maragul via Magalang remain impassable.

PASUDECO furnished the PNCC with a copy of the MOA.[5] In a Letter[6] dated October 22, 1992, the PNCC informed PASUDECO that it interposed no objection to the MOA.

At around 2:30 a.m. on January 23, 1993, Alex Sendin, the PNCC security supervisor, and his co-employees Eduardo Ducusin and Vicente Pascual were patrolling Km. 72 going north of the NLEX. They saw a pile of sugarcane in the middle portion of the north and southbound lanes of the road.[7] They placed lit cans with diesel oil in the north and southbound lanes, including lane dividers with reflectorized markings, to warn motorists of the obstruction. Sendin, Ducusin and Pascual proceeded to the PASUDECO office, believing that the pile of sugarcane belonged to it since it was the only milling company in the area. They requested for a payloador or grader to clear the area. However, Engineer Oscar Mallari, PASUDECO's equipment supervisor and transportation superintendent, told them that no equipment operator was available as it was still very early.[8] Nonetheless, Mallari told them that he would send someone to clear the affected area. Thereafter, Sendin and company went back to Km. 72 and manned the traffic. At around 4:00 a.m., five (5) PASUDECO men arrived, and started clearing the highway of the sugarcane. They stacked the sugarcane at the side of the road. The men left the area at around 5:40 a.m., leaving a few flattened sugarcanes scattered on the road. As the bulk of the sugarcanes had been piled and transferred along the roadside, Sendin thought there was no longer a need to man the traffic. As dawn was already approaching, Sendin and company removed the lighted cans and lane dividers.[9] Sendin went to his office in Sta. Rita, Guiguinto, Bulacan, and made the necessary report.[10]

At about 6:30 a.m., Rodrigo S. Arnaiz, a certified mechanic and marketing manager of JETTY Marketing, Inc.,[11] was driving his two-door Toyota Corolla with plate number FAG 961 along the NLEX at about 65 kilometers per hour.[12] He was with his sister Regina Latagan, and his friend Ricardo Generalao; they were on their way to Baguio to attend their grandmother's first death anniversary.[13] As the vehicle ran over the scattered sugarcane, it flew out of control and turned turtle several times. The accident threw the car about fifteen paces away from the scattered sugarcane.

Police Investigator Demetrio Arcilla investigated the matter and saw black and white sugarcanes on the road, on both lanes, which appeared to be flattened.[14]

On March 4, 1993, Arnaiz, Latagan and Generalao filed a complaint[15] for damages against PASUDECO and PNCC in the RTC of Manila, Branch 16. The case was docketed as Civil Case No. 93-64803. They alleged, inter alia, that through its negligence, PNCC failed to keep and maintain the NLEX safe for motorists when it allowed PASUDECO trucks with uncovered and unsecured sugarcane to pass through it; that PASUDECO negligently spilled sugarcanes on the NLEX, and PNCC failed to put up emergency devices to sufficiently warn approaching motorists of the existence of such spillage; and that the combined gross negligence of PASUDECO and PNCC was the direct and proximate cause of the injuries sustained by Latagan and the damage to Arnaiz's car. They prayed, thus:

WHEREFORE, it is respectfully prayed that, after due hearing, judgment be rendered for the plaintiffs, ordering the defendants jointly and severally:

(a)

To pay unto plaintiff Rodrigo Arnaiz the sum of P100,000.00 representing the value of his car which was totally wrecked;

(b)

to pay unto plaintiff Regina Latagan the sum of P100,000.00 by way of reimbursement for medical expenses, the sum of P50,000.00 by way of moral damages, and the sum of P30,000.00 by way of exemplary damages;

(c)

To pay unto plaintiffs Rodrigo Arnaiz and Ricardo Generalao the sum of P5,000.00 by way of reimbursement for medical expenses; and

(d)

To pay unto the plaintiffs the sum of P30,000.00 by way of attorney's fees; plus the costs of suit.

Plaintiffs pray for other reliefs which the Honorable Court may find due them in the premises.[16]

In its Answer,[17] PNCC admitted that it was under contract to manage the North Luzon Expressway, to keep it safe for motorists. It averred that the mishap was due to the "unreasonable speed" at which Arnaiz's car was running, causing it to turn turtle when it passed over some pieces of flattened sugarcane. It claimed that the proximate cause of the mishap was PASUDECO's gross negligence in spilling the sugarcane, and its failure to clear and mop up the area completely. It also alleged that Arnaiz was guilty of contributory negligence in driving his car at such speed.

The PNCC interposed a compulsory counterclaim[18] against the plaintiffs and cross-claim[19] against its co-defendant PASUDECO.

PASUDECO adduced evidence that aside from it, there were other sugarcane mills in the area, like the ARCAM Sugar Central (formerly known as Pampanga Sugar Mills) and the Central Azucarrera de Tarlac;[20] it was only through the expressway that a vehicle could access these three (3) sugar centrals;[21] and PASUDECO was obligated to clear spillages whether the planters' truck which caused the spillage was bound for PASUDECO, ARCAM or Central Azucarera.[22]

On rebuttal, PNCC adduced evidence that only planters' trucks with "PSD" markings were allowed to use the tollway;[23] that all such trucks would surely enter the PASUDECO compound. Thus, the truck which spilled sugarcane in January 1993 in Km. 72 was on its way to the PASUDECO compound.[24]

On November 11, 1994, the RTC rendered its decision[25] in favor of Latagan, dismissing that of Arnaiz and Generalao for insufficiency of evidence. The case as against the PNCC was, likewise, dismissed. The decretal portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

- ORDERING defendant PASUDECO:

1.

To pay plaintiff Regina Latagan:

a.

P25,000= for actual damages

b.

P15,000= for moral damages

c.

P10,000= for attorney's fees

P50,000

2. To pay costs of suit.

- The case is DISMISSED as to defendant PNCC. No pronouncement as to costs. Its counterclaim is, likewise, DISMISSED.

- The claims for damages of plaintiffs Rodrigo Arnaiz and Ricardo Generalao are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[26]

Both the plaintiffs Arnaiz, Latagan and Generalao and defendant PASUDECO appealed the decision to the CA. Since the plaintiffs failed to file their brief, the CA dismissed their appeal.[27]

Resolving PASUDECO's appeal, the CA rendered judgment on April 29, 2003, affirming the RTC decision with modification. The appellate court ruled that Arnaiz was negligent in driving his car, but that such negligence was merely contributory to the cause of the mishap, i.e., PASUDECO's failure to properly supervise its men in clearing the affected area. Its supervisor, Mallari, admitted that he was at his house while their men were clearing Km. 72. Thus, the appellate court held both PASUDECO and PNCC, jointly and severally, liable to Latagan. The decretal portion of the decision reads:

WHEREFORE, premises considered, the assailed DECISION is hereby MODIFIED and judgment is hereby rendered declaring PASUDECO and PNCC, jointly and solidarily, liable:

1. To pay plaintiff Regina Latagan:

a.

P25,000= for actual damages

b.

P15,000= for moral damages

c.

P10,000= for attorney's fees

2. To pay costs of suit.

SO ORDERED. [28]

The PNCC, now the petitioner, filed a petition for review on certiorari under Rule 45 of the Revised Rules of Court, alleging that:

THE HONORABLE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE TRIAL COURT AND MAKING PETITIONER PNCC, JOINTLY AND [SOLIDARILY], LIABLE WITH PRIVATE RESPONDENT PASUDECO.[29]

The petitioner asserts that the trial court was correct when it held that PASUDECO should be held liable for the mishap, since it had assumed such responsibility based on the MOA between it and the TRB. The petitioner relies on the trial court's finding that only PASUDECO was given a permit to pass through the route.

The petitioner insists that the respondents failed to prove that it was negligent in the operation and maintenance of the NLEX. It maintains that it had done its part in clearing the expressway of sugarcane piles, and that there were no more piles of sugarcane along the road when its men left Km. 72; only a few scattered sugarcane flattened by the passing motorists were left. Any liability arising from any mishap related to the spilled sugarcane should be

borne by PASUDECO, in accordance with the MOA which provides that "accidents or damages to the toll facilities arising out of any activity related to this approval shall be the responsibility of PASUDECO."

The petitioner also argues that the respondents should bear the consequences of their own fault or negligence, and that the proximate and immediate cause of the mishap in question was respondent Arnaiz's reckless imprudence or gross negligence.

The Court notes that the issues raised in the petition are factual in nature. Under Rule 45 of the Rules of Court, only questions of law may be raised in this Court, and while there are exceptions to the rule, no such exception is present in this case. On this ground alone, the petition is destined to fail. The Court, however, has reviewed the records of the case, and finds that the petition is bereft of merit.

The petitioner is the grantee of a franchise, giving it the right, privilege and authority to construct, operate and maintain toll facilities covering the expressways, collectively known as the NLEX.[30] Concomitant thereto is its right to collect toll fees for the use of the said expressways and its obligation to keep it safe for motorists.

There are three elements of a quasi-delict: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[31] Article 2176 of the New Civil Code provides:

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.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do.[32] It also refers to the conduct which creates undue risk of harm to another, the failure to observe that degree of care, precaution and vigilance that the circumstance justly demand, whereby that other person suffers injury.[33] The Court declared the test by which to determine the existence of negligence in *Picart v. Smith*,[34] viz:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The test for determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is always necessary before negligence can be held to exist.[35]

In the case at bar, it is clear that the petitioner failed to exercise the requisite diligence in maintaining the NLEX safe for motorists. The lighted cans and lane dividers on the highway were removed even as flattened sugarcanes lay scattered on the ground.[36] The highway was still wet from the juice and sap of the flattened sugarcanes.[37] The petitioner should have foreseen that the wet condition of the highway would endanger motorists passing by at

night or in the wee hours of the morning.

The petitioner cannot escape liability under the MOA between PASUDECO and TRB, since respondent Latagan was not a party thereto. We agree with the following ruling of the CA:

Both defendants, appellant PASUDECO and appellee PNCC, should be held liable. PNCC, in charge of the maintenance of the expressway, has been negligent in the performance of its duties. The obligation of PNCC should not be relegated to, by virtue of a private agreement, to other parties.

PNCC declared the area free from obstruction since there were no piles of sugarcane, but evidence shows there were still pieces of sugarcane stalks left flattened by motorists. There must be an observance of that degree of care, precaution, and vigilance which the situation demands. There should have been sufficient warning devices considering that there were scattered sugarcane stalks still left along the tollway.

The records show, and as admitted by the parties, that Arnaiz's car ran over scattered sugarcane stalks spilled from a hauler truck.[38]

Moreover, the MOA refers to accidents or damages to the toll facilities. It does not cover damages to property or injuries caused to motorists on the NLEX who are not privies to the MOA.

PASUDECO's negligence in transporting sugarcane stalks without proper harness/straps, and that of PNCC in removing the emergency warning devices, were two successive negligent acts which were the direct and proximate cause of Latagan's injuries. As such, PASUDECO and PNCC are jointly and severally liable. As the Court held in the vintage case of *Sabido v. Custodio*:[39]

According to the great weight of authority, where the concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other, are, in combination, the direct and proximate cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the entire injury, or the same damage might have resulted from the acts of the other tortfeasor. ...

In *Far Eastern Shipping Company v. Court of Appeals*,[40] the Court declared that the liability of joint tortfeasors is joint and solidary, to wit:

It may be said, as a general rule, that negligence in order to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes other than plaintiff's, is the proximate cause of the injury. Accordingly, where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured. It is no defense to one of the concurrent tortfeasors that the injury would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasors. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.

There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination with the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them

is responsible for the whole injury. Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194 of the Civil Code.

Thus, with PASUDECO's and the petitioner's successive negligent acts, they are joint tortfeasors who are solidarily liable for the resulting damage under Article 2194 of the New Civil Code.[41]

Anent respondent Arnaiz's negligence in driving his car, both the trial court and the CA agreed that it was only contributory, and considered the same in mitigating the award of damages in his favor as provided under Article 2179[42] of the New Civil Code. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[43] Even the petitioner itself described Arnaiz's negligence as contributory. In its Answer to the complaint filed with the trial court, the petitioner asserted that "the direct and proximate cause of the accident was the gross negligence of PASUDECO personnel which resulted in the spillage of sugarcane and the apparent failure of the PASUDECO workers to clear and mop up the area completely, coupled with the contributory negligence of Arnaiz in driving his car at an unreasonable speed." [44] However, the petitioner changed its theory in the present recourse, and now claims that the proximate and immediate cause of the mishap in question was the reckless imprudence or gross negligence of respondent Arnaiz.[45] Such a change of theory cannot be allowed. When a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[46]

IN LIGHT OF ALL THE FOREGOING, the present petition is hereby DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. CV No. 47699, dated April 29, 2003, is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Romeo A. Brawner (now Presiding Justice of the Court of Appeals) and Regalado E. Maambong, concurring; Rollo, pp. 30-45.

[2] Exhibit "6," PNCC.

[3] Exhibit "5," PNCC.

[4] Exhibit "9," PNCC.

[5] Exhibit "8," PNCC.

[6] Exhibit "10," PNCC.

[7] TSN, 8 March 1994, pp. 18-20.

[8] Id. at 21-29.

[9] TSN, 8 March 1994, pp. 29-39.

[10] Exhibit "2," PNCC.

[11] TSN, 19 October 1993, p. 4.

- [12] TSN, 23 November 1993, p. 13.
- [13] Id. at 38.
- [14] TSN, 1 March 1994, pp. 72-77.
- [15] Records, p. 1.
- [16] Records, pp. 3-4.
- [17] Id. at 10.
- [18] Records, pp. 13-14.
- [19] Id. at 14.
- [20] TSN, 12 July 1994, pp. 10-11.
- [21] Id. at 14-15.
- [22] Id. at 56.
- [23] TSN, 14 July 1994, p. 29.
- [24] Id. at 46.
- [25] Rollo, pp. 58-84; Penned by Judge Ramon O. Santiago.
- [26] Id. at 84.
- [27] CA Rollo, p. 85.
- [28] Rollo, p. 45.
- [29] Id. at 15.
- [30] See Presidential Decree No. 1113, as amended by P.D. No. 1894.
- [31] Smith Bell Dodwell Shipping Agency Corporation v. Borja, G.R. No. 143008, 10 June 2002, 383 SCRA 341.
- [32] Philippine Bank of Commerce v. Court of Appeals, G.R. No. 97626, 14 March 1997, 269 SCRA 695.
- [33] Smith Bell Dodwell Shipping Agency Corporation v. Borja, *supra*.
- [34] 37 Phil. 809 (1918).
- [35] People v. De los Santos, G.R. No. 131588, 27 March 2001, 355 SCRA 415.
- [36] TSN, 8 March 1994, pp. 36-37.
- [37] TSN, 10 March 1994, p. 18.
- [38] Rollo, p. 44.
- [39] G.R. No. L-21512, 31 August 1966, 17 SCRA 1088, citing 38 Am. Jur. 946, 947.
- [40] G.R. No. 130068, 1 October 1998, 297 SCRA 30.
- [41] Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary.
- [42] Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he

cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

[43] Valenzuela v. Court of Appeals, G.R No. 115024, 7 February 1996, 253 SCRA 303.

[44] Records, pp. 12-13.

[45] Rollo, p. 22.

[46] See Drilon v. Court of Appeals, 336 Phil. 949 (1997).

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