

STEPHEN CANG AND GEORGE NARDO Y JOSOL, PETITIONERS, VS. HERMINIA CULLEN, RESPONDENT.*G.R. No. 163078. November 25, 2009*

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-163078/>**NACHURA, J.:**

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] dated December 2, 2002 and the Resolution[2] dated February 23, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69841. In the assailed Decision, the CA reversed and set aside the Decision[3] of the Regional Trial Court (RTC) of Cebu, Branch 22, in Civil Case No. CEB-20504, an action for damages.

The claim for damages was precipitated by a vehicular accident involving a taxicab bearing Plate No. GVG-672, owned by petitioner Stephen Cang and driven by petitioner George Nardo, and a motorcycle owned by respondent Herminia Cullen and driven by Guillermo Saycon.

On October 29, 1996, at about 3:10 p.m., Saycon was driving the Honda motorcycle, with Plate No. LLC-A-4589, along P. del Rosario Street, Cebu City, occupying the middle portion of the outer lane. The taxi, on the other hand, was traveling on the inner lane and slightly behind, but to the left of, the motorcycle. Respondent alleged that between Sikatuna and D. Jakosalem Streets, the taxi veered to the right and sideswiped the motorcycle, then attempted to speed away. Peace officers near the scene flagged down the taxi. As a result of the collision, Saycon was seriously injured.[4]

Petitioners, meanwhile, claimed that it was the motorcycle that bumped into the taxi. Nardo narrated that he was driving the taxi on the inner lane (near the center island) along P. del Rosario St., moving towards the intersection of D. Jakosalem St. When the "caution" signal of the traffic light flashed, he immediately slowed down. It was at that point that the motorcycle bumped into the taxi's rear.[5]

Respondent, as employer, out of compassion, paid all of Saycon's hospital and medical expenses amounting to P185,091.00.[6] She also alleged that due to the injuries Saycon sustained, he was unable to work. For humanitarian reasons, respondent had given Saycon an amount equivalent to his wages from October 31, 1996 to May 30, 1997. She also gave Saycon P2,000.00 per month from June 1997 until he was able to return to work.[7]

On July 3, 1997, respondent filed a Complaint for damages against petitioners praying that judgment be rendered ordering the latter to pay, jointly and severally, P205,091.00 in actual damages; P2,000.00 per month from June 1997 up to the time Saycon would be able to return to work, with 6% per annum interest from the date of extrajudicial demand; P50,000.00 as exemplary damages; 20% of the total amount by way of attorney's fees; P10,000.00 as acceptance fee; P500.00 per court appearance, as appearance fee; P20,000.00 as litigation expenses; and the cost of the suit.[8]

Petitioner Cang filed a Motion to Dismiss contending that the complaint violated Presidential Decree No. 1508, or the Katarungang Pambarangay Law. The motion was dismissed on September 24, 1997.[9]

Subsequently, petitioners filed their Answer with Counterclaims. Cang averred that Nardo was not driving the taxi as the former's employee, but that Nardo was leasing the taxi from him.[10] Petitioners also claimed that Nardo did not sideswipe the motorcycle driven by Saycon, nor did the latter speed away after the incident. They maintained that, at the time of the impact, Nardo's taxi was on its proper lane and that it was the motorcycle that veered into Nardo's lane and bumped the taxi.[11] Further, they alleged that after the impact, Nardo drove the taxi backward to where Saycon and the motorcycle were slumped on the road. He then alighted from the taxi. Meanwhile, two traffic enforcers had crossed the street. After examining Saycon's injuries, one of the enforcers ordered Nardo to bring the former to a hospital. Nardo hesitated for a moment because he wanted the enforcers to make a sketch of the accident first, to show the exact positions of the vehicles at the time of the accident. However, he was prevailed upon by the traffic enforcers to bring Saycon to the hospital. Hence, it was not true that Nardo attempted to speed away from the scene of the accident. Petitioner Cang also claimed that Saycon was driving the motorcycle without any protective headgear and that the latter was not authorized to drive the motorcycle since he only had a student's permit.[12] Petitioner Cang prayed that the complaint be dismissed for lack of merit, for lack of cause of action and for lack of legal capacity. He also prayed for the award of P50,000.00 as moral damages, P20,000.00 as exemplary damages, P10,000.00 as acceptance fee, P30,000.00 as attorney's fees, P20,000.00 as litigation expenses, and P1,000.00 per court appearance.[13]

After trial, the RTC ruled in petitioners' favor. In its Decision[14] dated January 31, 2000, the trial court disposed:

WHEREFORE, based upon the foregoing, judgment is hereby rendered in favor of the defendants. Plaintiffs (sic) complaint is hereby dismissed.

Defendants' counterclaims are likewise denied.

No pronouncement as to costs.

SO ORDERED.[15]

Respondent appealed the RTC Decision to the CA. On December 2, 2002, the CA promulgated the assailed Decision,[16] reversing the RTC Decision, to wit:

WHEREFORE, premises considered, the appealed decision dated January 31, 2000 of the Regional Trial Court of Cebu, Branch 22 is hereby REVERSED and SET ASIDE. Defendants-appellees are hereby ordered to pay plaintiff-appellant, jointly and severally[,] the following:

1.) The sum of P166,197.08 as actual damages which were incurred for the hospitalization and other medical expenses of plaintiff-appellant's driver Guillermo Saycon; and

`2.) The sum of P20,000.00 as exemplary damages.

SO ORDERED.[17]

Petitioners are now before this Court on Petition for Review seeking the reversal of the CA Decision and its Resolution denying their Motion for Reconsideration. They argue that the CA erred in reversing the judgment rendered by the trial court; in giving credence to the eyewitness' testimony of Ike Aldemita, that petitioner Nardo had overtaken the motorcycle driven by Saycon and, therefore, was the negligent party; and in awarding damages to respondent.[18]

The petition is meritorious.

We note that the present Petition raises questions of fact. Whether a person is negligent or not is a question of fact which we cannot ordinarily pass upon in a petition for review on certiorari, as our jurisdiction is limited to reviewing errors of law.[19]

However, although findings of fact of the CA are generally conclusive on this Court, this rule admits of the following exceptions:[20]

- (1) the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) the findings are grounded entirely on speculation, surmises or conjectures;
- (3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible;
- (4) there is grave abuse of discretion in the appreciation of facts;
- (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;
- (6) the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and
- (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

Thus, when there are conflicting findings of fact by the CA on one hand and by the trial court on the other, as in this case,[21] the Court may give due course to petitions raising factual issues by way of exception and only in the presence of extremely meritorious circumstances.[22]

Contrary to the CA's ruling, we find that the RTC correctly disregarded Aldemita's testimony. Between the RTC and the CA, it is the former's assessment of the witnesses' credibility that should control.[23]

The trial court gave little credence to Aldemita's testimony, upon its finding that:

On the other hand, multicab driver Aldemita contended that he saw everything. He said that the motorcycle and the taxi overtook him. He told the court during his testimony that the motorcycle was ahead of the taxi. He further said that the motorcycle was nearer him (TSN, February 13, 1998, Savellon, p. 4). The court finds him inconsistent. If both were ahead of him and the motorcycle was ahead of the taxi, then, the motorcycle could not be nearer him. Because if the motorcycle was indeed nearer him, then, it could not have been ahead of the taxi. But rather, the taxi was ahead of the motorcycle. But in a later testimony, he said that they were beside each other (TSN, Feb. 12, 1998, Savellon, p. 17).

He also said that both tried to pass the lane which would fit only two vehicles. He told the court that both vehicles were running fast - at a speed of more than 30 kph - when the motorcycle was hit by the taxi. It would seem to the court that both vehicles were racing each other. Aldemita further said that in trying to pass the motorcycle, the taxi hit the left handle bar of the motorcycle. The handle bar was twisted and the motorcycle fell down to the left side. But if the taxi was indeed to the left of the motorcycle and if it really swerved to the right and hit the motorcycle - the law of force would tell us that the motorcycle would fall to the right after impact. It is the most logical direction for the motorcycle to fall. If the taxi was indeed traveling at a fast speed when it hit the motorcycle, the impact would not have only caused a mere twisted handle and the motorcycle would not have only fallen on its side as claimed by Aldemita. High speed impact would have caused the motorcycle and its driver greater damage and would have dislocated them much farther away than where it fell in this case.

He claimed that he was more or less ten (10) meters from the site of the accident when it happened (TSN, Feb.

12, 1998, p. 12). The court can, therefore, say that he was also quite far from the scene of the accident and could not be that certain as to what really happened.

Aldemita also said that he signaled the taxi driver to stop (TSN, Feb. 12, 1998, Savellon, p. 6). However, later when asked, he said he signaled the "policeman" to stop the taxi driver or not (sic). He also claimed that he was near (sic) the motorcyclist than the "policemen." He further claimed that he was there at the scene of the accident to help but later said he never saw the driver of the taxi (TSN, Feb. 12, 1998, Savellon, p. 17). The court finds this highly unusual for somebody who claimed to be at the scene of the accident not to see the driver who came out of his vehicle to reason out with the responding enforcers. He said he was the one who removed the motorcycle which pinned its driver and then helped carried (sic) the driver to the taxi as told by the "policeman" (TSN, Feb. 12, 1998, Savellon p. 7). But later, he said that somebody took his place in carrying the victim because there were already many people (TSN, Feb. 12, 1998, Savellon, p. 17). x x x.

x x x x

The court also cannot fail to notice the uncontroverted allegation of Nardo during his testimony that Aldemita was not the person (the multicab driver) he saw during the time of the accident. He claimed that the person who testified in court last February 12, 1998, was not the driver of the multicab who was at the scene of the accident that fateful night (sic) of October 29, 1996 (TSN, Aug. 24, 1998, Pieras, p. 12). Allegations and claims like this when not countered and disproved would certainly cast doubt on the credibility of the subject person and consequently, on his testimonies, too.

Based on the points, the court cannot help but find Aldemita's testimony as uncertain and filled with so many inconsistencies. They contradicted with each other at many instances. The court believes in either of the two possibilities -- Aldemita did not really actually and exactly see the whole incident or he was lying through his teeth. Thus, the court cannot give so much weight to his testimony.[24]

The CA failed to refute the trial court's detailed analysis of the events leading to the accident and what transpired thereafter. It merely said that the lower court should have considered Aldemita's eyewitness testimony.[25] The CA based its findings of the accident only on Aldemita's account. It failed to consider all the other testimonial and documentary evidence analyzed by the trial court, which substantially controverted Aldemita's testimony.

In contrast, the trial court found Nardo more credible on the witness stand. Thus:

During his testimonies, Nardo appeared to be consistent, sincere and certain in his statements. He appeared to be acknowledgeable (sic) in his work as a driver. He conveyed a definite degree of credibility when he testified. The Court has decided to give more appreciation to his testimonies.[26]

We are inclined to give greater weight to the trial court's assessment of the two witnesses.

The findings of the trial court on the credibility of witnesses are accorded great weight and respect - even considered as conclusive and binding on this Court[27] - since the trial judge had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination.[28] Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh of a witness, or his scant or full realization of an oath - all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[29] He can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.[30]

Absent any showing that the trial court's calibration of the credibility of the witnesses was flawed, we are bound by its assessment.[31] This Court will sustain such findings unless it can be shown that the trial court ignored,[32] overlooked, misunderstood,[33] misappreciated,[34] or misapplied[35] substantial facts and circumstances, which, if considered, would materially affect the result of the case.[36]

We find no such circumstances in this case. The trial court's meticulous and dispassionate analysis of the facts of the case is noteworthy. It succeeded in presenting a clear and logical picture of the events even as it admitted that the resolution of the case was made more difficult by the "inefficiencies, indifference, ineptitude, and dishonesty of the local law enforcers, and the litigants,"[37] which left the court without an official sketch of the accident,[38] with no photographs or any other proof of the damage to the respondent's motorcycle,[39] with an altered police report,[40] and with the baffling matter of the victim's driver's license being issued two days after the accident took place - when the victim was supposed to be in the hospital.[41]

These handicaps notwithstanding, the trial court methodically related in detail all the testimonial and documentary evidence presented, and made the most rational analysis of what truly happened on the day of the incident.

The trial court categorically found that it was not the taxi that bumped the motorcycle. It concluded that based on the evidence presented before the court, it was the motorcycle that bumped the taxi.[42] It also found that at the time of the accident, Saycon, the driver of the motorcycle, did not have a license but only had a student driver's permit. Further, Saycon was not wearing the proper protective headgear and was speeding.[43] Hence, the trial court concluded:

It was really pitiful that Saycon suffered for what he did. But then, he has only himself to blame for his sad plight. He had been careless in driving the motorcycle without a helmet. For speeding. (sic) For driving alone with only a student permit. (sic) For causing the accident. (sic) If the driver was found violating traffic rules, a legal presumption that he was negligent arises.[44]

Section 30 of Republic Act No. 4136, or the Land Transportation and Traffic Code, provides:

Sec. 30. Student-driver's permit - Upon proper application and the payment of the fee prescribed in accordance with law, the Director or his deputies may issue student-driver's permits, valid for one year to persons not under sixteen years of age, who desire to learn to operate motor vehicles.

A student-driver who fails in the examination on a professional or non-professional license shall continue as a student-driver and shall not be allowed to take another examination at least one month thereafter. No student-driver shall operate a motor vehicle, unless possessed of a valid student-driver's permit and accompanied by a duly licensed driver.

The licensed driver duly accredited by the Bureau, acting as instructor to the student driver, shall be equally responsible and liable as the latter for any violation of the provisions of this Act and for any injury or damage done by the motor vehicle on account or as a result of its operation by a student-driver under his direction.[45]

Saycon was in clear violation of this provision at the time of the accident. Corollarily, Article 2185 of the Civil Code states:

Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

The Civil Code characterizes negligence as the omission of that diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[46] Negligence, as it is commonly understood, is conduct that creates an undue risk of harm to others. It is the failure to observe that degree of care, precaution and vigilance that the circumstances justly demand.[47] It is the omission to do something which a reasonable man, guided by considerations that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable man would not do.[48]

To determine whether there is negligence in a given situation, this Court laid down this test: Did 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, the person is guilty of negligence.[49]

Based on the foregoing test, we can conclude that Saycon was negligent. In the first place, he should not have been driving alone. The law clearly requires that the holder of a student-driver's permit should be accompanied by a duly licensed driver when operating a motor vehicle. Further, there is the matter of not wearing a helmet and the fact that he was speeding. All these prove that he was negligent.

Under Article 2179 of the Civil Code,

[w]hen 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.

The trial court gave more credence to Nardo's version of the accident that he was on his proper lane, that he was not speeding, and that it was the motorcycle that bumped into his taxi. The trial court established that the accident was caused wholly by Saycon's negligence. It held that "the injuries and damages suffered by plaintiff (respondent) and Saycon were not due to the acts of defendants (petitioners) but due to their own negligence and recklessness." [50]

Considering that Saycon was the negligent party, he would not have been entitled to recover damages from petitioners had he instituted his own action. Consequently, respondent, as his employer, would likewise not be entitled to claim for damages.

Further militating against respondent's claim is the fact that she herself was negligent in the selection and supervision of her employee. Article 2180 of the Civil Code states:

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.[51]

When an employee causes damage due to his own negligence while performing his own duties, there arises the

juris tantum presumption that his employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family.[52] Thus, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.[53]

The fact that Saycon was driving alone with only a student's permit is, to our minds, proof enough that Cullen was negligent - either she did not know that he only had a student's permit or she allowed him to drive alone knowing this deficiency. Whichever way we look at it, we arrive at the same conclusion: that she failed to exercise the due diligence required of her as an employer in supervising her employee. Thus, the trial court properly denied her claim for damages. One who seeks equity and justice must come to this Court with clean hands.[54]

In sum, we hold that the trial court correctly found that it was Saycon who caused the accident and, as such, he cannot recover indemnity for his injury. On the other hand, respondent, as Saycon's employer, was also negligent and failed to exercise the degree of diligence required in supervising her employee. Consequently, she cannot recover from petitioners what she had paid for the treatment of her employee's injuries.

WHEREFORE, the foregoing premises considered, the Petition is GRANTED. The Decision dated December 2, 2002 and the Resolution dated February 23, 2004 of the Court of Appeals in CA-G.R. CV No. 69841 are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Cebu, Branch 22, in Civil Case No. CEB-20504 is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Edgardo F. Sundiam, concurring; rollo; pp. 39-55.

[2] Id. at 57-59.

[3] Penned by Judge Pampio A. Abarintos; rollo, pp. 60-78.

[4] Id. at 60.

[5] Id. at 61.

[6] Id. at 60.

[7] Id. at 61.

[8] Id.

[9] Rollo, p. 42.

[10] Id. at 61.

[11] Id. at 60-61.

[12] Id. at 62.

[13] Id.

[14] Supra note 3.

[15] Id. at 78.

[16] Supra note 1.

[17] Id. at 54-55.

[18] Rollo, p. 17.

[19] *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 231, citing *Yambao v. Zuñiga*, 418 SCRA 266, 271 (2003).

[20] *Palecpe, Jr. v. Davis*, G.R. No. 171048, July 31, 2007, 528 SCRA 720, 735; *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116, 121; *Sarmiento v. CA* 353, Phil. 834, 846 (1998). (Emphasis supplied.)

[21] *Palecpec, Jr. v. Davis*, supra note 20, at 736, citing *Department of Agrarian Reform v. Estate of Pureza Herrera*, 463 SCRA 107, 123 (2005).

[22] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 563 (2004), citing *Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al.*, 125 Phil. 701 (1967).

[23] *People v. Domingo*, G.R. No. 177136, June 30, 2008, 556 SCRA 788, 802; *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651.

[24] Rollo, pp. 74-75.

[25] Id. at 51-52.

[26] Id. at 76.

[27] *People v. Cañeta*, 368 Phil. 501, 510-511 (1999), citing *People v. Angeles*, 275 SCRA 19, 28-29 (1997).

[28] *People v. Banhaon*, 476 Phil. 7, 25 (2004); *People v. Awing*, 404 Phil. 815, 833-834 (2001).

[29] *Gomez v. Gomez-Samson*, G.R. No. 156284, February 6, 2007, 514 SCRA 475, 495; *People v. Francisco*, 448 Phil. 805, 816-817 (2003), citing *People v. Bertulfo*, 431 Phil. 535, 547 (2002); *People v. Abella*, 393 Phil. 513, 534 (2000).

[30] *People v. Awing*, supra note 28.

[31] *People v. Banhaon*, supra note 28; *People v. Awing*, supra note 28, at 834.

[32] *People v. Awing*, supra note 28, at 833.

[33] *Gomez v. Gomez-Samson*, supra note 29, at 502; *Ong v. Bogñalbal*, G.R. No. 149140, September 12, 2006, 501 SCRA 490, 505.

[34] *People v. Banhaon*, supra note 28, at 25.

[35] *People v. Caballes*, G.R. Nos. 102723-24, June 19, 1997, 274 SCRA 83,97, citing *People v. Atuel*, 330 Phil. 23, 35 (1996).

[36] *Gomez v. Gomez-Samson*, supra note 29.

[37] Id. at 72.

[38] Id.

[39] Id. at.76.

[40] Id. at.73.

[41] Id. at 75.

[42] Id. at 76.

[43] Id.

[44] Id. at 77.

[45] Emphasis supplied.

[46] Añonuevo v. Court of Appeals, 483 Phil. 756, 765 (2004).

[47] Valenzuela v. Court of Appeals, 323 Phil. 374, 391 (1996). (Citations omitted.)

[48] Philippine National Railways v. Brunty, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 696-697, citing McKee v. Intermediate Appellate Court, 211 SCRA 517, 539 (1992).

[49] Philippine National Railways v. Brunty, supra note 48, at 697, citing Picart v. Smith, 37 Phil. 809, 813 (1918).

[50] Rollo, pp. 77-78.

[51] Emphasis supplied.

[52] Mendoza v. Soriano, G.R. No. 164012, June 8, 2007, 524 SCRA 260, 269; Pleyto v. Lomboy, 476 Phil. 373, 386 (2004).

[53] Pleyto v. Lomboy, supra.

[54] Sandejas v. Ignacio, Jr., G.R. No. 155033, December 19, 2007, 541 SCRA 61, 76.

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