

PHILIPPINE NATIONAL RAILWAYS, PETITIONER, VS. ETHEL BRUNTY AND JUAN MANUEL M. GARCIA, RESPONDENTS.*G.R. NO. 169891. November 02, 2006*

Ponente: CALLEJO, SR., J.

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This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 47567 and its Resolution[2] denying the motion for reconsideration thereof. The assailed decision affirmed with partial modification the ruling[3] of the Regional Trial Court (RTC) of Manila, Branch 20, directing petitioner Philippine National Railways (PNR) to indemnify respondents Ethel Brunty and Juan Manuel M. Garcia for the death of Rhonda Brunty, and to pay actual and moral damages, attorney's fees and cost of suit.

Rhonda Brunty, daughter of respondent Ethel Brunty and an American citizen, came to the Philippines for a visit sometime in January 1980. Prior to her departure, she, together with her Filipino host Juan Manuel M. Garcia, traveled to Baguio City on board a Mercedes Benz sedan with plate number FU 799, driven by Rodolfo L. Mercelita. It was about 12:00 midnight, January 25, 1980. By then, PNR Train No. T-71, driven by Alfonso Reyes, was on its way to Tutuban, Metro Manila[4] as it had left the La Union station at 11:00 p.m., January 24, 1980.

By 2:00 a.m., Rhonda Brunty, Garcia and Mercelita were already approaching the railroad crossing at Barangay Rizal, Moncada, Tarlac. Mercelita, driving at approximately 70 km/hr, drove past a vehicle, unaware of the railroad track up ahead and that they were about to collide with PNR Train No. T-71. Mercelita was instantly killed when the Mercedes Benz smashed into the train; the two other passengers suffered serious physical injuries.[5] A certain James Harrow[6] brought Rhonda Brunty to the Central Luzon Doctor's Hospital in Tarlac, where she was pronounced dead after ten minutes from arrival. Garcia, who had suffered severe head injuries, was brought via ambulance to the same hospital. He was transferred to the Manila Doctor's Hospital, and later to the Makati Medical Center for further treatment.[7]

On July 28, 1981, Ethel Brunty sent a demand letter[8] to the PNR demanding payment of actual, compensatory, and moral damages, as a result of her daughter's death. When PNR did not respond, Ethel Brunty and Garcia, filed a complaint[9] for damages against the PNR before the RTC of Manila. The case was raffled to Branch 20 and was docketed as Civil Case No. 83-18645. They alleged that the death of Mercelita and Rhonda Brunty, as well as the physical injuries suffered by Garcia, were the direct and proximate result of the gross and reckless negligence of PNR in not providing the necessary equipment at the railroad crossing in Barangay Rizal, Municipality of Moncada, Tarlac. They pointed out that there was no flagbar or red light signal to warn motorists who were about to cross the railroad track, and that the flagman or switchman was only equipped with a hand flashlight.[10] Plaintiffs likewise averred that PNR failed to supervise its employees in the performance of their respective tasks and duties, more particularly the pilot and operator of the train.[11] They prayed for the payment of the following damages:

- 1.) P200,000.00 as actual and compensatory damages to plaintiff Ethel Brunty;
- 2.) P2,800,000.00 for compensatory damages to plaintiff Ethel Brunty representing lost or unearned income of Rhonda Brunty;
- 3.) Such amounts of moral and exemplary damages as may be warranted by the evidence adduced, to plaintiff Ethel Brunty;
- 4.) At least P64,057.61 as actual damages representing medical expenses to plaintiff Juan Manuel M. Garcia and at least P1,000,000.00 as unearned or lost income of said plaintiff;
- 5.) At least P72,760.00 as actual damages representing cost of the Mercedes Benz car to plaintiff Juan Manuel M. Garcia;
- 6.) Such amounts of moral and exemplary damages as may be warranted by the evidence adduced, to plaintiff Juan Manuel M. Garcia; and
- 7.) Attorney's fees equivalent to at least 15% of the total award to plaintiffs herein.[12]

In its Answer,[13] PNR claimed that it exercised the diligence of a good father of a family not only in the selection but also in the supervision of its employees.[14] By way of special and affirmative defense, it stressed that it had the right of way on the railroad crossing in question, and that it has no legal duty to put up a bar or red light signal in any such crossing. It insisted that there were adequate, visible, and clear warning signs strategically posted on the sides of the road before the railroad crossing. It countered that the immediate and proximate cause of the accident was Mercelita's negligence, and that he had the last clear chance to avoid the accident. The driver disregarded the warning signs, the whistle blasts of the oncoming train and the flashlight signals to stop given by the guard.[15] As counterclaim, it prayed that it be awarded actual and compensatory damages, and litigation expenses.[16]

Plaintiffs filed an Amended Complaint[17] dated July 28, 1986 to include, as party plaintiff, Chemical Industries of the Philippines, Inc. (Chemphil), Garcia's employer, who claimed to have paid for the latter's medical and hospitalization expenses, the services rendered by the funeral parlor of the deceased, and the expenses in transferring the remains of Rhonda Brunty to the United States.[18]

After trial on the merits, the RTC rendered its Decision[19] on May 21, 1990 in favor of plaintiffs. The fallo reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Ethel Brunty and Juan Manuel M. Garcia and against the defendant Philippine National Railways directing the latter to pay the former the sum of:

- Thirty Thousand Pesos (P30,000.00) Philippine Currency, for the death of Rhonda Brunty formerly a resident of 1595 Ashland Avenue, Des Plaines, Illinois, U.S.A.;
- One Million Pesos (P1,000,000.00) Philippine Currency for moral and actual damages due the heirs of Rhonda Brunty;
- Seventy-Two Thousand Seven Hundred Sixty Pesos (P72,760.00) Philippine Currency for damages sustained by the Mercedes Benz;
- Fifty Thousand Pesos (P50,000.00) Philippine Currency as and for attorney's fees, and;
- Costs of suit.

SO ORDERED.[20]

Aggrieved, the PNR appealed the case to the CA, raising the following errors:

I.

THE TRIAL COURT ERRED IN ADJUDGING DEFENDANT-APPELLANT PNR LIABLE FOR THE DEATH OF RHONDA BRUNTY AND THE CONSEQUENT AWARD OF DAMAGES DUE THE HEIRS OF RHONDA BRUNTY.

II.

THE TRIAL COURT ERRED IN ADJUDGING DEFENDANT-APPELLANT PNR LIABLE FOR THE DAMAGES SUFFERED BY PLAINTIFF-APPELLEE'S MERCEDES BENZ IN THE AMOUNT OF SEVENTY-TWO THOUSAND SEVEN HUNDRED AND SIXTY PESOS (P72,760.00).

III.

THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES TO THE PLAINTIFFS-APPELLEES.[21]

In its Brief, PNR insisted that the sole and proximate cause of the accident was the negligence and recklessness of Garcia and Mercelita.[22] It insisted that it had provided adequate warning signals at the railroad crossing[23] and had exercised due care in the selection and supervision of its employees.[24] The RTC erred in awarding damages to Rhonda Brunty as she cannot be allowed to receive what she is not in a position to give, having been a non-resident alien who did not own a property in the Philippines.[25] It likewise questioned the award of damages on the Mercedes Benz as well as the grant of attorney's fees.[26] At the very least, Mercelita was guilty of contributory negligence.[27]

For their part, appellees countered that appellant was grossly and recklessly negligent in not properly providing the necessary equipment at the railroad crossing in Rizal, Moncada, Tarlac;[28] appellant was negligent in not exercising due diligence of a good father of a family in the supervision of its employees, particularly the train operator Alfonso Reyes;[29] the car was driven in a careful and diligent manner, and at a moderate speed, with due regard to all traffic rules and regulations at that particular time;[30] the doctrine of "last clear chance" is not applicable;[31] Ethel Brunty is a non-resident alien who can rightfully file the instant case;[32] and they are entitled to recover damages from appellant.[33]

The CA rendered the assailed Decision[34] on August 15, 2005. The dispositive portion reads:

WHEREFORE, premises considered, the assailed decision is hereby AFFIRMED with PARTIAL MODIFICATIONS, increasing the death indemnity award from P30,000.00 to P50,000.00, and deleting the award for damages sustained by the Mercedes Benz.

SO ORDERED.[35]

The appellate court affirmed the findings of the RTC as to the negligence of the PNR. Considering the circumstances prevailing at the time of the fatal accident, it ruled that the alleged safety measures installed by the PNR at the railroad crossing were not merely inadequate – they did not satisfy the well-settled safety standards in transportation.[36] However, the CA did not agree with the RTC's findings on the contributory negligence of Mercelita, the driver of the Mercedes Benz. It held that Mercelita could not have foreseen the harm that would befall him and the two other passengers under the prevailing circumstances, thus, could not be considered guilty of contributory negligence.[37]

The PNR, now petitioner, comes before this Court in this Petition for Review on Certiorari on the following grounds:

I.

THE COURT OF APPEALS ERRED IN MANIFESTLY OVERLOOKING CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION SUCH AS:

THE RESPONDENTS' DRIVER OVERTOOK ANOTHER VEHICLE BY ACCELERATING AT 70 KILOMETERS PER HOUR WITHIN JUST 50 YARDS AWAY FROM THE RAILROAD TRACKS.

II.

THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT REGARDING CONTRIBUTORY NEGLIGENCE OF THE RESPONDENTS' DRIVER.

III.

THE COURT OF APPEALS ERRED IN NOT APPLYING THE DOCTRINE OF LAST CLEAR CHANCE IN THE INSTANT CASE.[38]

Petitioner insists that the proximate cause of the mishap was Mercelita's disregard of traffic rules and regulations. Had the court considered the fact that Mercelita had overtaken another vehicle a few yards before the railroad track, it would have reached a different conclusion.[39] Moreover, petitioner asserts, considering that the decisions of the RTC and the CA vary as to whether or not Mercelita was guilty of contributory negligence, the findings of the RTC should prevail. Thus, Mercelita's contributory negligence should not have been ignored.[40] Lastly, petitioner avers that since there is freedom of control and greater maneuverability on the part of motor vehicles, it is obvious that in railroad crossings, they have the last clear chance to prevent or avoid an unwanted accident from taking place.[41]

In their Comment[42] on the petition, respondents reiterate the findings of the RTC and the CA that the breach by petitioner of its legal duty to provide adequate and necessary public safety device and equipment within the area or scene of the accident was the proximate cause of the mishap.[43] While it is true that as a general rule, the trial court is in the best position to evaluate and observe the conduct and demeanor of the witnesses presented during the trial, the CA, in the exercise of its appellate jurisdiction, has the vested right to modify, reject, or set aside the trial court's evaluation and findings.[44] As to the application of the doctrine of last clear chance, respondents claim that said issue is being raised for the first time in this petition.[45] Lastly, respondents cite foreign jurisprudence stating that if the violation is one which gives rise to liability per se for any resulting injury, the defenses ordinarily available in actions for diligence are barred and the contributory negligence of the person injured is no defense.[46]

The Court is thus tasked to answer the following factual questions: (1) As between petitioner and Mercelita, whose negligence resulted in the unfortunate collision? (2) Is Mercelita (the driver of the Mercedes Benz) guilty of contributory negligence? Finally, the application in this case of the doctrine of last clear chance is likewise in question.

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 not do.[47] In *Corliss v. Manila Railroad Company*,[48] this Court held that negligence is want of the care required by the circumstances. It is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require.[49] In determining whether or not there is negligence on the part of the parties in a given situation, jurisprudence[50] has laid down the following 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. The law, in effect, adopts the standard supposed to be supplied by the imaginary conduct of the discreet pater familias of the Roman law.

The issue of who, between the parties, was negligent was thoroughly discussed by both the RTC and the CA. In petitions for review under Rule 45 of the Revised Rules of Court, only questions of law may be put into issue, and questions of fact as a general rule, cannot be entertained. The finding of negligence by the RTC, as affirmed by the CA, is a question of fact which this Court cannot pass upon as it would entail going into factual matters on which the finding of negligence was based.[51] The established rule is that factual findings of the CA affirming those of the trial court are conclusive and binding on this Court.[52]

The records of the instant case show that both the RTC and the CA carefully examined the factual circumstances surrounding the case, and we find no cogent reason to disturb the same. It is, however, worthy to emphasize that petitioner was found negligent because of its failure to provide the necessary safety device to ensure the safety of motorists in crossing the railroad track. As such, it is liable for damages for violating the provisions of Article 2176 of the New Civil Code, viz:

Article 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.

In a long line of cases, the Court held that in order to sustain a claim based on quasi-delict, the following requisites must concur: (1) damage to plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose acts he must respond was guilty; and (3) connection of cause and effect between such negligence and damage.[53] Applying the foregoing requisites, the CA correctly made the following conclusions:

It was clearly established that plaintiffs-appellees (respondents herein) sustained damage or injury as a result of the collision. That there was negligence on the part of PNR is, likewise, beyond cavil. Considering the circumstances prevailing at the time of the fatal accident, the alleged safety measures installed by the PNR at the railroad crossing is not only inadequate but does not satisfy well-settled safety standards in transportation.

x x x

x x x x

x x x An examination of the photographs of the railroad crossing at Moncada, Tarlac presented as evidence by PNR itself would yield the following: (1.) absence of flagbars or safety railroad bars; (2.) inadequacy of the installed warning signals; and (3.) lack of proper lighting within the area. Thus, even if there was a flagman stationed at the site as claimed by PNR (petitioner), it would still be impossible to know or see that there is a railroad crossing/tracks ahead, or that there is an approaching train from the Moncada side of the road since one's view would be blocked by a cockpit arena. x x x[54]

Moreover, the CA held that a vehicle coming from the Moncada side would have difficulty in knowing that there is an approaching train because of the slight curve, more so, at an unholy hour as 2:00 a.m. Thus, it is imperative on the part of the PNR to provide adequate safety equipment in the area.[55]

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 in the operation of trains and in the maintenance of the crossings.[56] 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 a 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.[57]

This Court has previously determined the liability of the PNR for damages for its failure to put a cross bar, or signal light, flagman or switchman, or semaphores. Such failure 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.[58]

In view of the foregoing, we affirm the factual findings of the CA as well as its conclusion on petitioner's negligence.

As to whether or not Mercelita was guilty of contributory negligence, we agree with petitioner. 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.[59] To hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body.[60] To prove contributory negligence, it is still necessary to establish a causal link, although not proximate, between the negligence of the party and the succeeding injury. In a legal sense, negligence is contributory only when it contributes proximately to the injury, and not simply a condition for its occurrence.[61]

The court below found that there was a slight curve before approaching the tracks; the place was not properly illuminated; one's view was blocked by a cockpit arena; and Mercelita was not familiar with the road. Yet, it was also established that Mercelita was then driving the Mercedes Benz at a speed of 70 km/hr and, in fact, had overtaken a vehicle a few yards before reaching the railroad track. Mercelita should not have driven the car the way he did. However, while his acts contributed to the collision, they nevertheless do not negate petitioner's liability. Pursuant to Article 2179[62] of the New Civil Code, the only effect such contributory negligence could have is to mitigate liability, which, however, is not applicable in this case, as will be discussed later.

As to whether or not the doctrine of last clear chance is applicable, we rule in the negative. The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. Stated differently, the antecedent negligence of plaintiff does not preclude him from recovering damages caused by the supervening negligence of defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.[63] The proximate cause of the injury having been established to be the negligence of petitioner, we hold that the above doctrine finds no application in the instant case.

We note that the damages awarded by the appellate court consist of (1) P50,000.00 as indemnity for the death of Rhonda Brunty; (2) P1,000,000.00 as actual and moral damages due the heirs of Rhonda Brunty; and (3) P50,000.00 as and by way of attorney's fees. No damages, however, were awarded for the injuries suffered by Garcia, yet, the latter never interposed an appeal before the CA nor even before this Court. The record is, likewise, bereft of any allegation and proof as to the relationship between Mercelita (the driver) and Rhonda Brunty. Hence, the earlier finding of contributory negligence on the part of Mercelita, which generally has the effect of mitigation of liability, does not apply.

As to the amount of damages awarded, a modification of the same is in order, specifically on the award of actual and moral damages in the aggregate amount of P1,000,000.00.

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice, aimed at repairing the wrong done. To be recoverable, they

must be duly proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered, and on evidence of the actual amount thereof.[64] Respondents, however, failed to present evidence for such damages; hence, the award of actual damages cannot be sustained. However, as the heirs of Rhonda Brunty undeniably incurred expenses for the wake and burial of the latter, we deem it proper to award temperate damages in the amount of P25,000.00 pursuant to prevailing jurisprudence.[65] This is in lieu of actual damages as it would be unfair for the victim's heirs to get nothing, despite the death of their kin, for the reason alone that they cannot produce receipts.[66]

The relatives of the victim who incurred physical injuries in a quasi-delict are not proscribed from recovering moral damages in meritorious cases.[67] We, therefore, sustain the award of moral damages in favor of the heirs of Rhonda Brunty.

Moral damages are not punitive in nature, but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person. Although incapable of pecuniary computation, moral damages must nevertheless be somehow proportional to and in approximation of the suffering inflicted.[68] In the instant case, the moral suffering of the heirs of Rhonda Brunty was sufficiently established by Ethel Brunty in her deposition,[69] viz:

Q: What have you felt as a result of the death of Rhonda?

A: I felt earnest anguish and mixed feelings of anger and extreme sorrow because she died so far away and alone, and because her death could so easily be prevented if there had been adequate and appropriate warning signals at the railroad crossing and it is just an unbearable and irreparable loss. In so many ways, she was my life. It seemed to me that losing her was just like losing my own life, or worst, and even now, there is no end to our bereavement. I am still on constant medication to be able to sleep and to be able to perform my duties effectively in my job but it does not take away the pain of loss.[70]

In *People v. Teehankee, Jr.*, [71] and in *Metro Manila Transit Corporation v. Court of Appeals*, [72] we awarded moral damages in the amount of P1,000,000.00 to the heirs of the deceased. In *Victory Liner, Inc. v. Heirs of Malecdan*, [73] the award of P100,000.00 as moral damages was held in keeping with the purpose of the law, while in *Macalinao v. Ong*, [74] the amount of P50,000.00 was held sufficient.

Considering the circumstances attendant in this case, we find that an award of P500,000.00 as moral damages to the heirs of Rhonda Brunty is proper. In view of recent jurisprudence, indemnity of P50,000.00 for the death of Rhonda Brunty and attorney's fees amounting to P50,000.00 is likewise proper.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated August 15, 2005 is **AFFIRMED WITH MODIFICATIONS**. The award of actual damages is deleted, and in lieu thereof, temperate damages of P25,000.00 is awarded to the heirs of Rhonda Brunty. The award of moral damages is reduced to P500,000.00.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ. concur.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid, concurring; rollo, pp. 148-157.

[2] Rollo, p. 171.

[3] Penned by Judge Doroteo N. Cañeba; rollo, pp. 69-73.

[4] Rollo, p. 149.

[5] Id.

[6] Id.

[7] Id.

[8] Records, pp. 140-141.

[9] Id. at 1-6.

[10] Id. at 2.

[11] Id.

[12] Id. at 5-6.

[13] Id. at 9-12.

[14] Id. at 9-10.

[15] Id. at 10-11.

[16] Id. at 12.

[17] Id. at 90-95.

[18] Id. at 94.

[19] Supra note 3.

[20] Rollo, pp. 72-73.

[21] CA rollo, pp. 29-30.

[22] Id. at 44-55.

[23] Id. at 56-62.

[24] Id. at 62-73.

[25] Id. at 73-75.

[26] Id. at 75-77.

[27] Id. at 77-79.

[28] Id. at 98-100.

[29] Id. at 100-102.

[30] Id. at 103-104.

[31] Id. at 104-105.

[32] Id. at 105-106.

[33] Id. at 106.

[34] Rollo, pp. 148-156.

[35] Id. at 156.

[36] Id. at 152.

[37] Id. at 154.

[38] Id. at 13-14.

[39] Id. at 14-16.

[40] Id. at 17-18.

[41] Id. at 20.

[42] Id. at 181-188.

[43] Id. at 182.

[44] Id. at 184.

[45] Id. at 185.

[46] Id. at 186.

[47] *McKee v. Intermediate Appellate Court*, G.R. No. 68102, July 16, 1992, 211 SCRA 517, 539, citing *Layugan v. Intermediate Appellate Court*, 167 SCRA 363 (1988).

[48] 137 Phil. 101, 108 (1969).

[49] Cited in *McKee v. IAC*, *supra*, at 539.

[50] *Picart v. Smith*, 37 Phil. 809, 813 (1918), cited in *McKee v. IAC*, *supra*, at 543.

[51] *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 231; *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 290; *Pestaño v. Sumayang*, G.R. No. 139875, December 4, 2000, 346 SCRA 870, 878.

[52] *Pestaño v. Sumayang*, *supra*.

[53] CA Decision dated August 15, 2005, rollo, p. 152, citing *FGU Insurance Corporation v. Court of Appeals*, 351 Phil. 219, 224 (1998).

[54] Rollo, pp. 152-153.

[55] Id. at 154.

[56] 37 Am.Jur. PO F.2d 439.

[57] Id.

[58] *Philippine National Railway v. Intermediate Appellate Court*, G.R. No. 70547, January 22, 1993, 217 SCRA 401, 410, citing *Lilius v. Manila Railroad Company*, 59 Phil. 758 (1934).

[59] *Valenzuela v. Court of Appeals*, 323 Phil. 374, 388 (1996).

[60] *Estacion v. Bernardo*, *supra* note 51, at 235; *Añonuevo v. Court of Appeals*, G.R. No. 130003, October 20, 2004, 441 SCRA 24, 44.

[61] Añonuevo v. Court of Appeals, *supra*.

[62] Article 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.

[63] Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, September 11, 2003, 410 SCRA 562, 580.

[64] Public Estates Authority v. Chu, G.R. No. 145291, September 21, 2005, 470 SCRA 495, 505; ABS-CBN Broadcasting Corporation, 361 Phil. 499, 529-530 (1999).

[65] People v. Werba, G.R. No. 144599, June 9, 2004, 431 SCRA 482, 499; People v. Villanueva, 456 Phil. 14, 29 (2003).

[66] People v. Villanueva, *supra*, at 29.

[67] Macalinao v. Ong, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 759.

[68] Macalinao v. Ong, *supra*.; Victory Liner, Inc. v. Heirs of Andres Malecdan, 442 Phil. 784 (2002); Equitable Leasing Corporation v. Suyom, 437 Phil. 244, 257-258 (2002); Metro Manila Transit Corporation v. Court of Appeals, 359 Phil. 18, 36 (1998).

[69] Records, pp. 78-82.

[70] *Id.* at 80.

[71] 319 Phil. 128, 215 (1995).

[72] *Supra*.

[73] *Supra*.

[74] *Supra*.

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