

ALBERT TISON AND CLAUDIO L. JABON, PETITIONERS, VS. SPS. GREGORIO POMASIN AND CONSORCIA PONCE POMASIN, DIANNE POMASIN PAGUNSAN, CYNTHIA POMASIN, SONIA PEROL, ANTONIO SESISTA, GI...

G.R. No. 173180. August 24, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

Two vehicles, a tractor-trailer and a jitney,[1] figured in a vehicular mishap along Maharlika Highway in Barangay Agos, Polangui, Albay last 12 August 1994. Laarni Pomasin (Laarni) was driving the jitney towards the direction of Legaspi City while the tractor-trailer, driven by Claudio Jabon (Jabon), was traversing the opposite lane going towards Naga City.[2]

The opposing parties gave two different versions of the incident.

Gregorio Pomasin (Gregorio), Laarni's father, was on board the jitney and seated on the passenger's side. He testified that while the jitney was passing through a curve going downward, he saw a tractor-trailer coming from the opposite direction and encroaching on the jitney's lane. The jitney was hit by the tractor-trailer and it was dragged further causing death and injuries to its passengers.[3]

On the other hand, Jabon recounted that while he was driving the tractor-trailer, he noticed a jitney on the opposite lane falling off the shoulder of the road. Thereafter, it began running in a zigzag manner and heading towards the direction of the truck. To avoid collision, Jabon immediately swerved the tractor-trailer to the right where it hit a tree and sacks of palay. Unfortunately, the jitney still hit the left fender of the tractor-trailer before it was thrown a few meters away. The tractor-trailer was likewise damaged.[4]

Multiple death and injuries to those in the jitney resulted.

Gregorio was injured and brought to the Albay Provincial Hospital in Legaspi City. His daughter, Andrea Pomasin Pagunsan, sister Narcisa Pomasin Roncales and Abraham Dionisio Perol died on the spot. His other daughter Laarni, the jitney driver, and granddaughter Annie Jane Pomasin Pagunsan expired at the hospital. His wife, Consorcia Pomasin, another granddaughter Dianne Pomasin Pagunsan, Ricky Ponce, Vicente Pomasin, Gina Sesista, Reynaldo Sesista, Antonio Sesista and Sonia Perol sustained injuries.[5] On the other hand, Jabon and one of the passengers in the tractor-trailer were injured.[6]

Albert Tison (Tison), the owner of the truck, extended financial assistance to respondents by giving them P1,000.00 each immediately after the accident and P200,000.00 to Cynthia Pomasin (Cynthia), one of Gregorio's daughters. Cynthia, in turn, executed an Affidavit of Desistance.

On 14 November 1994, respondents filed a complaint for damages against petitioners before the Regional Trial Court (RTC) of Antipolo. They alleged that the proximate cause of the accident was the negligence, imprudence

and carelessness of petitioners. Respondents prayed for indemnification for the heirs of those who perished in the accident at P50,000.00 each; P500,000.00 for hospitalization, medical and burial expenses; P350,000.00 for continuous hospitalization and medical expenses of Spouses Pomasin; P1,000,000.00 as moral damages; P250,000.00 as exemplary damages; P30,000.00 for loss of income of Cynthia; P100,000.00 as attorney's fees plus P1,000.00 per court appearance; P50,000.00 for litigation expenses; and cost of suit.[7]

In their Answer, petitioners countered that it was Laarni's negligence which proximately caused the accident. They further claimed that Cynthia was authorized by Spouses Pomasin to enter into an amicable settlement by executing an Affidavit of Desistance. Notwithstanding the affidavit, petitioners complained that respondents filed the instant complaint to harass them and profit from the recklessness of Laarni. Petitioners counterclaimed for damages.

Petitioners subsequently filed a motion to dismiss the complaint in view of the Affidavit of Desistance executed by Cynthia. The motion was denied for lack of merit.[8]

On 7 February 2000, the Regional Trial Court rendered judgment in favor of petitioners dismissing the complaint for damages, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the defendants and against plaintiffs hereby DISMISSING the instant complaint considering that plaintiffs have authorized Cynthia Pomasin to settle the case amicably for P200,000.00; and that the proximate cause of the accident did not arise from the fault or negligence of defendants' driver/employee but from plaintiff's driver.[9]

The trial court considered the testimony of Jabon regarding the incident more convincing and reliable than that of Gregorio's, a mere passenger, whose observation and attention to the road is not as focused as that of the driver. The trial court concluded that Laarni caused the collision of the jitney and the tractor-trailer. The trial court likewise upheld the Affidavit of Desistance as having been executed with the tacit consent of respondents.

The Court of Appeals disagreed with the trial court and ruled that the reckless driving of Jabon caused the vehicular collision. In support of such finding, the Court of Appeals relied heavily on Gregorio's testimony that Jabon was driving the tractor-trailer downward too fast and it encroached the lane of the jitney. Based on the gravity of the impact and the damage caused to the jitney resulting in the death of some passengers, the Court of Appeals inferred that Jabon must be speeding. The appellate court noted that the restriction in Jabon's driver's license was violated, thus, giving rise to the presumption that he was negligent at the time of the accident. Tison was likewise held liable for damages for his failure to prove due diligence in supervising Jabon after he was hired as driver of the truck. Finally, the appellate court disregarded the Affidavit of Desistance executed by Cynthia because the latter had no written power of attorney from respondents and that she was so confused at the time when she signed the affidavit that she did not read its content.

The dispositive portion of the assailed Decision states:

WHEREFORE, the present appeal is granted, and the trial court's Decision dated February 7, 2003 is set aside. Defendants-appellees are ordered to pay plaintiffs-appellants or their heirs the following:

- a) Actual damages of P136,000.00 as above computed, to be offset with the P200,000.00 received by plaintiff-appellant Cynthia Pomasin;
- b) Civil indemnity of P50,000.00 for the death of each victim, to be offset with the balance of P64,000.00 from the aforementioned P200,000.00 of civil indemnity received by plaintiff-appellant Cynthia Pomasin. Hence, the net amount is computed at P37,200.00 each, as follows:

Narcisa Pomasin

P37,200.00

Laarni Pomasin

P37,200.00

Andrea P. Pagunsan

P37,200.00

Dionisio Perol

P37,200.00

Annie Jane P. Pagunsan

P37,200.00

c) Moral damages of P50,000.00 to each of the victims; and

d) Attorney's fees of 10% of the total award.[10]

Petitioners filed a Motion for Reconsideration, which was, however, denied by the Court of Appeals in a Resolution[11] dated 19 July 2006.

The petition for review raises mixed questions of fact and law which lead back to the very issue litigated by the trial court: Who is the negligent party or the party at fault?

The issue of negligence is factual in nature.[12] And the rule, and the exceptions, is that factual findings of the Court of Appeals are generally conclusive but may be reviewed when: (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 manifestly 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.[13]

The exceptions to the rule underscore the substance and weight of the findings of the trial court. They render inconclusive contrary findings by the appellate court. The reason is now a fundamental principle:

[A]ppellate courts do not disturb the findings of the trial courts with regard to the assessment of the credibility of witnesses. The reason for this is that trial courts have the `unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.

The exceptions to this rule are when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case, have been overlooked by the trial court, or when the assailed decision is based on a misapprehension of facts.[14]

This interplay of rules and exceptions is more pronounced in this case of quasi-delict in which, according to Article 2176 of the Civil Code, whoever by act or omission causes damage to another, there being fault or

negligence, is obliged to pay for the damage done. To sustain a claim based on quasi-delict, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by the plaintiff.[15] These requisites must be proved by a preponderance of evidence.[16] The claimants, respondents in this case, must, therefore, establish their claim or cause of action by preponderance of evidence, evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[17]

The trial court found that the jitney driver was negligent. We give weight to this finding greater than the opposite conclusion reached by the appellate court that the driver of the tractor-trailer caused the vehicular collision.

One reason why the trial court found credible the version of Jabon was because his concentration as driver is more focused than that of a mere passenger. The trial court expounded, thus:

In the appreciation of the testimony of eye-witnesses, one overriding consideration is their opportunity for observation in getting to know or actually seeing or observing the matter they testify to. This most particularly holds true in vehicular collision or accident cases which oftentimes happen merely momentarily or in the split of a second. In the case of a running or travelling vehicle, especially in highway travel which doubtless involves faster speed than in ordinary roads, the driver is concentrated on his driving continuously from moment to moment even in long trips. While in the case of a mere passenger, he does not have to direct his attention to the safe conduct of the travelling vehicle, as in fact he may converse with other passengers and pay no attention to the driving or safe conduct of the travelling vehicle, as he may even doze off to sleep if he wants to, rendering his opportunity for observation on the precise cause of the accident or collision or immediately preceding thereto not as much as that of the driver whose attention is continuously focused on his driving. So that as between the respective versions of the plaintiffs thru their passenger and that of the defendants thru their driver as to the cause or antecedent causes that led to the vehicular collision in this case, the version of the driver of defendant should ordinarily be more reliable than the version of a mere passenger of Plaintiffs' vehicle, simply because the attention of the passenger is not as much concentrated on the driving as that of the driver, consequently the capacity for observation of the latter of the latter on the matter testified to which is the precise point of inquiry --- the proximate cause of the accident --- is more reasonably reliable. Moreover, the passenger's vision is not as good as that of the driver from the vantage point of the driver's seat especially in nighttime, thus rendering a passenger's opportunity for observation on the antecedent causes of the collision lesser than that of the driver. This being so, this Court is more inclined to believe the story of defendant's driver Claudio Jabon that the jitney driven by Laarni Pomasin fell off the shoulder of the curved road causing it to run thereafter in a zigzag manner and in the process the two vehicles approaching each other from opposite directions at highway speed came in contact with each other, the zigzagging jeep hitting the left fender of the truck all the way to the fuel tank, the violent impact resulting in the lighter vehicle, the jitney, being thrown away due to the disparate size of the truck.[18]

The appellate court labelled the trial court's rationalization as a "sweeping conjecture"[19] and countered that Gregorio was actually occupying the front seat of the jitney and had actually a clear view of the incident despite the fact that he was not driving.

While it is logical that a driver's attention to the road travelled is keener than that of a mere passenger, it should also be considered that the logic will hold only if the two are similarly circumstanced, and only as a general rule, so that, it does not necessarily follow that between the opposing testimonies of a driver and a passenger, the former is more credible. The factual setting of the event testified on must certainly be considered.

The trial court did just that in the instant case. Contrary to the observation of the Court of Appeals, the relative positions of a driver and a passenger in a vehicle was not the only basis of analysis of the trial court. Notably, aside from Jabon's alleged vantage point to clearly observe the incident, the trial court also took into consideration

Gregorio's admission that prior to the accident, the jitney was running on the "curving and downward" portion of the highway. The appellate court, however, took into account the other and opposite testimony of Gregorio that it was their jitney that was going uphill and when it was about to reach a curve, he saw the incoming truck running very fast and encroaching the jitney's lane.

We perused the transcript of stenographic notes and found that the truck was actually ascending the highway when it collided with the descending jitney.

During the direct examination, Jabon narrated that the tractor-trailer was ascending at a speed of 35 to 40 kilometers per hour when he saw the jitney on the opposite lane running in a zigzag manner, thus:

Q:

Now, when you passed by the municipality of Polangui, Albay at about 5:00 of August 12, 1994, could you tell the Court if there was any untoward incident that happened?

A:

There was sir.

Q:

Could you please tell the Court?

A:

While on my way to Liboro coming from Sorsogon, I met on my way a vehicle going on a zigzag direction and it even fell on the shoulder and proceeded going on its way on a zigzag direction.

Q:

Could you describe to the Court what was the kind of vehicle you saw running in zigzag direction?

A:

A Toyota-jitney loaded with passengers with top-load.

Q:

You said that the top[-]load of the jeep is loaded?

A:

Yes, sir.

Q:

Could you please tell the Court what was your speed at the time when you saw that jeepney with top[-]load running on a zigzag manner?

A:

I was running 35 to 40 kilometers per hour because I was ascending plain. (Emphasis supplied).[20]

In that same direct examination, Jabon confirmed that he was ascending, viz:

Q:

Could you please describe the condition in the area at the time of the incident, was it dark or day time?

A:

It was still bright.

COURT:

But it was not approaching sunset?

A:

Yes, sir.

Q:

Was there any rain at that time?

A:

None sir.

Q:

So the road was dry?

A:

Yes sir.

Q:

You said you were ascending towards the direction of Liboro, Camarines Sur, is that correct at the time the incident happened?

A:

Yes sir.[21]

(Emphasis supplied).

Upon the other hand, Gregorio, during his direct examination described the road condition where the collision took place as "curving and downward," thus:

Q:

Could you please describe the place where the incident happened in so far as the road condition is concerned?

A:

The road was curving and downward.

Q:

And the road was of course clear from traffic, is that correct?

A:

Yes sir.

Q:

And practically, your jitney was the only car running at that time?

A:

Yes sir.[22] (Emphasis supplied).

Significantly, this is a confirmation of the testimony of Jabon.

However, on rebuttal, Gregorio turned around and stated that the jitney was going uphill when he saw the tractor-trailer running down very fast and encroaching on their lane, to wit:

Q:

Mr. Claudio Jabon, the driver of the trailer truck that collided with your owner jeepney that you were riding testified in open Court on July 24, 1997 which I quote, 'while on my way to Liboro coming to Sorsogon I met a vehicle going on a zig-zag direction and it even fell on the shoulder and proceeded going on its way on zig-zag direction', what can you say about this statement of this witness?

A:

We were no[t] zigzagging but because we were going uphill and about to reach a curved (sic) we saw the on-coming vehicle going down very fast and encroaching on our lane so our driver swerved our vehicle to the right but still we were hit by the on-coming vehicle.[23] (Emphasis supplied).

The declaration of Jabon with respect to the road condition was straightforward and consistent. The recollection of Gregorio veered from "curving and downward" to uphill.[24] On this point, Jabon and his testimony is more credible.

The fact that the jitney easily fell into the road shoulder, an undebated fact, supports the trial court's conclusion that the jitney was indeed going downhill which, it may be repeated, was the original testimony of Gregorio that the road was "curving and downward." [25] It is this conclusion, prodded by the inconsistency of Gregorio's testimony, that gives credence to the further testimony of Jabon that the herein respondent's jitney, "loaded with passengers with top-load" "was running in a zigzag manner." [26]

Going downward, the jitney had the tendency to accelerate. The fall into the shoulder of the road can result in the loss of control of the jitney, which explains why it was running in a zigzag manner before it hit the tractor-trailer.

There was no showing that the tractor-trailer was speeding. There is a preponderance of evidence that the tractor-trailer was in fact ascending. Considering its size and the weight of the tractor-trailer, its speed could not be more than that of a fully loaded jitney which was running downhill in a zigzagging manner.

Neither can it be inferred that Jabon was negligent. In hindsight, it can be argued that Jabon should have swerved to the right upon seeing the jitney zigzagging before it collided with the tractor-trailer. Accidents, though, happen in an instant, and, understandably in this case, leaving the driver without sufficient time and space to maneuver a vehicle the size of a tractor-trailer uphill and away from collision with the jitney oncoming downhill.

Clearly, the negligence of Gregorio's daughter, Laarni was the proximate cause of the accident.

We did not lose sight of the fact that at the time of the incident, Jabon was prohibited from driving the truck due to the restriction imposed on his driver's license, i.e., restriction code 2 and 3. As a matter of fact, Jabon even asked the Land Transportation Office to reinstate his articulated license containing restriction code 8 which would allow him to drive a tractor-trailer. The Court of Appeals concluded therefrom that Jabon was violating a traffic regulation at the time of the collision.

Driving without a proper license is a violation of traffic regulation. Under Article 2185 of the Civil Code, the legal presumption of negligence arises if at the time of the mishap, a person was violating any traffic regulation.

However, in *Sanitary Steam Laundry, Inc. v. Court of Appeals*,^[27] we held that a causal connection must exist between the injury received and the violation of the traffic regulation. It must be proven that the violation of the traffic regulation was the proximate or legal cause of the injury or that it substantially contributed thereto. Negligence, consisting in whole or in part, of violation of law, like any other negligence, is without legal consequence unless it is a contributing cause of the injury.^[28] Likewise controlling is our ruling in *Añonuevo v. Court of Appeals*^[29] where we reiterated that negligence per se, arising from the mere violation of a traffic statute, need not be sufficient in itself in establishing liability for damages. In said case, Añonuevo, who was driving a car, did not attempt "to establish a causal connection between the safety violations imputed to the injured cyclist, and the accident itself. Instead, he relied on a putative presumption that these violations in themselves sufficiently established negligence appreciable against the cyclist. Since the onus on Añonuevo is to conclusively prove the link between the violations and the accident, we can deem him as having failed to discharge his necessary burden of proving the cyclist's own liability."^[30] We took the occasion to state that:

The rule on negligence per se must admit qualifications that may arise from the logical consequences of the facts leading to the mishap. The doctrine (and Article 2185, for that matter) is undeniably useful as a judicial guide in adjudging liability, for it seeks to impute culpability arising from the failure of the actor to perform up to a standard established by a legal fiat. But the doctrine should not be rendered inflexible so as to deny relief when in fact there is no causal relation between the statutory violation and the injury sustained. Presumptions in law, while convenient, are not intractable so as to forbid rebuttal rooted in fact. After all, tort law is remunerative in spirit, aiming to provide compensation for the harm suffered by those whose interests have been invaded owing to the conduct of other.^[31]

In the instant case, no causal connection was established between the tractor-trailer driver's restrictions on his license to the vehicular collision. Furthermore, Jabon was able to sufficiently explain that the Land Transportation Office merely erred in not including restriction code 8 in his license.

Petitioners presented the Affidavit of Desistance executed by Cynthia to exonerate them from any liability. An affidavit of desistance is usually frowned upon by courts. Little or no persuasive value is often attached to a desistance.^[32] The subject affidavit does not deserve a second look more so that it appears that Cynthia was not armed with a special power of attorney to enter into a settlement with petitioners. At any rate, it is an exercise of futility to delve into the effects of the affidavit of desistance executed by one of the respondents since it has already been established that petitioners are not negligent.

WHEREFORE, the petition is GRANTED. The challenged Decision and Resolution of the Court of Appeals are REVERSED and SET ASIDE. Civil Case No. 94-3418 lodged before the Regional Trial Court of Antipolo City, Branch 74, is DISMISSED for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Brion, and Mendoza,**] JJ., concur.

[*] Per Special Order No. 1067-C.

**] Per Special Order No. 1066.

[1] The word jitney has been used interchangeably with the word jeepney during the lower courts' proceedings. Merriam-Webster online defines jitney as a small bus that carries passengers over a regular route on a flexible schedule. In the Philippines, it is commonly known as jeepney. (<http://www.merriam-webster.com/dictionary/jitney>).

- [2] Records, p. 142.
- [3] TSN, 24 July 1996, pp. 6-7.
- [4] Id. at 5-7.
- [5] TSN, 13 November 1995, pp. 9-10.
- [6] TSN, 24 July 1997, p. 9.
- [7] Records, pp. 5-6.
- [8] Id. at 69.
- [9] Rollo, p. 74.
- [10] Id. at 57-58.
- [11] Id. at 59-60.
- [12] *Safeguard Security Agency, Inc. v. Tangco*, G.R. No. 165732, 14 December 2006, 511 SCRA 67, 82.
- [13] *Vallacar Transit v. Catubig*, G.R. No. 175512, 30 May 2011; *Land Bank of the Philippines v. Monet's Export and Manufacturing Corporation*, G.R. No. 161865, 10 March 2005, 453 SCRA 173, 184-185.
- [14] *People v. Cias*, G.R. No. 194379, 1 June 2011 citing *People v. Malana*, G.R. No. 185716, 29 September 2010, 631 SCRA 676, 686; *People v. Malate*, G.R. No. 185724, 5 June 2009, 588 SCRA 817, 825-826; *People v. Burgos*, G.R. No. 117451, 29 September 1997, 279 SCRA 697, 705-707.
- [15] *Guillang v. Bedania*, G.R. No. 162987, 21 May 2009, 588 SCRA 73, 84 citing *Dy Teban Trading, Inc. v. Ching*, G.R. No. 161803, 4 February 2008, 543 SCRA 560, 571.
- [16] *Briones v. Macabagdal*, G.R. No. 150666, 3 August 2010, 626 SCRA 300, 309; *Gregorio v. Court of Appeals*, G.R. No. 179799, 11 September 2009, 599 SCRA 594, 606.
- [17] *Gepiga Vda. De Soco v. Soco Vda. De Barbon*, G.R. No. 188484, 6 December 2010, 636 SCRA 553, 559.
- [18] Rollo, p. 70.
- [19] Id. at 45.
- [20] TSN, 24 July 1997, pp. 4-5.
- [21] Id. at 14.
- [22] TSN, 24 July 1996, p. 6.
- [23] TSN, 4 November 1998, pp. 4-5.
- [24] TSN, 24 July 1996, p. 7.
- [25] Id. at 6.
- [26] TSN, 24 July 1997, pp. 4-6.
- [27] G.R. No. 119092, 10 December 1998, 300 SCRA 20, 28 citing *SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES* 20 (1993).
- [28] *Sanitary Steam Laundry, Inc. v. Court of Appeals*, id. at 28.

[29] G.R. No. 130003, 20 October 2004, 441 SCRA 24.

[30] *Id.* at 44.

[31] *Id.* at 41.

[32] *Alonte v. Savellano, Jr.*, G.R. No. 131652, 9 March 1998, 287 SCRA 245, 295.

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