

CRESENCIA ACHEVARA, ALFREDO ACHEVARA, AND BENIGNO VALDEZ, PETITIONERS, VS. ELVIRA RAMOS, JOHN ARNEL RAMOS, AND KHRISTINE CAMILLE RAMOS, RESPONDENTS.

G.R. No. 175172. September 29, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari^[1] of the Decision dated April 25, 2006 of the Court of Appeals in CA-G.R. CV No. 67027, and its Resolution dated October 23, 2006, denying petitioners' motion for reconsideration. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court (RTC) of Ilocos Sur, Branch 22, dated February 14, 2000, holding petitioners solidarily liable to respondents for damages incurred due to a vehicular accident, which resulted in the death of Arnulfo Ramos.

The facts are as follows:

On June 27, 1995, respondents Elvira Ramos and her two minor children, namely, John Arnel Ramos and Khristine Camille Ramos, filed with the RTC of Ilocos Sur a Complaint^[2] for damages under Article 2176^[3] of the Civil Code against petitioners Cresencia Achevara, Alfredo Achevara and Benigno Valdez for the death of Arnulfo Ramos, husband of Elvira Ramos and father of her two children, in a vehicular accident that happened on April 22, 1995 at the national highway along Barangay Tablac, Candon, Ilocos Sur. Crescencia Achevara was sued as the operator of the passenger jeep with Plate No. DKK-995, which was involved in the vehicular accident. Alfredo Achevara was impleaded as the husband of the operator and as the administrator of the conjugal partnership properties of the Spouses Achevara.

In their Complaint,^[4] respondents alleged that in the morning of April 22, 1995, Benigno Valdez was driving a passenger jeep heading north on the national highway in Barangay Tablac, Candon, Ilocos Sur in a reckless, careless, and negligent manner. He tried to overtake a motorcycle, causing the passenger jeep to encroach on the opposite lane and bump the oncoming vehicle driven by Arnulfo Ramos. The injuries sustained by Arnulfo Ramos caused his death, notwithstanding prompt medical assistance. Respondents alleged that Crescencia Achevara failed to exercise due diligence in the selection and supervision of Benigno Valdez as driver of the passenger jeep. Respondents sought to recover actual damages for medical expenses in the sum of P33,513.00 and funeral expenses in the sum of P30,000.00, as well as moral and exemplary damages, lost earnings, attorney's fees and litigation expenses.

In their Answer,^[5] petitioners denied respondents' allegation that Benigno Valdez overtook a motorcycle and bumped the vehicle driven by Arnulfo Ramos. They alleged that on April 22, 1995, Benigno Valdez was driving southward at a moderate speed when he saw an owner-type jeep coming from the south and heading north, running in a zigzag manner, and encroaching on the west lane of the road. To avoid a collision, Valdez drove the passenger jeep towards the shoulder of the road, west of his lane, but the owner-type jeep continued to move toward the western lane and bumped the left side of the passenger jeep. Petitioners alleged that it was Arnulfo

Ramos who was careless and negligent in driving a motor vehicle, which he very well knew had a mechanical defect. Hence, respondents had no cause of action against petitioners.

During trial on the merits, respondents presented three witnesses: Alfredo Gamera, Dr. Emilio Joven and Elvira Ramos.

Alfredo Gamera testified that at about 10:00 a.m. of April 22, 1995, he and his wife were seated at the waiting shed along the national highway in Tablac, Candon, Ilocos Sur, waiting for a ride to the town proper of Candon. He saw a motorcycle, driven by Police Officer 3 (PO3) Baltazar de Peralta, coming from the interior part of Tablac and proceeding south toward the town proper. He also saw a southbound passenger jeep, driven by Benigno Valdez, that wanted to overtake the motorcycle of PO3 De Peralta. As it tried to overtake the motorcycle, the passenger jeep encroached on the lane of the northbound owner-type jeep driven by Arnulfo Ramos, which resulted in the collision. Gamera stated that the point of impact was on the lane of the vehicle of Arnulfo Ramos. Thereafter, the passenger jeep screeched to a halt at the fence of the Funtanilla family. The owner-type jeep was destroyed and the windshield was broken.[6]

Gamera testified that he was about 100 meters from the place where the vehicular accident occurred. The speed of the passenger jeep was about 70 kilometers per hour, while that of the owner-type jeep was about 30 kilometers per hour.[7]

On cross-examination, it was found that Gamera went to the Police Station in Candon, Ilocos Sur to execute his sworn statement only on May 30, 1992, one month after the incident and after respondent Elvira Ramos talked to him. Moreover, at the preliminary investigation, Gamera did not mention in his sworn statement that his wife was present during the incident, which fact was admitted by respondent's counsel. Further, at that time, Gamera was working as a jueteng collector at the same joint where the deceased Arnulfo Ramos was also employed, and he had known Ramos for five years.[8]

Dr. Emilio Joven, a surgeon of the Lorma Medical Center, San Fernando, La Union, testified that Arnulfo Ramos was admitted at the Lorma Hospital at about 12:50 p.m. on April 22, 1995. The latter sustained external injuries, mostly on the left side of the body, which could have been caused by a vehicular accident. The CT scan result of Arnulfo Ramos showed blood clots inside the brain, scattered small hemorrhagic contusions, and swelling and blood clots on the base of the brain, which internal injuries caused his death.[9] The immediate cause of death was "acute cranio-cerebral injury." [10]

Respondent Elvira Ramos testified on the damages she incurred due to the vehicular accident, which resulted in the death of her husband. She spent P33,513.00 for hospitalization and P30,000.00 for the funeral. She prayed for the award of lost earnings, moral damages, exemplary damages, attorney's fees, appearance fees and other costs of litigation.[11]

She also testified that the owner-type jeep was registered in the name of Matilde Tacad[12] of Sto. Domingo, Ilocos Sur.[13]

Petitioners presented six witnesses, namely, PO3 Baltazar de Peralta, Special Police Officer 2 (SPO2) Marvin Valdez, Herminigildo Pagaduan, Benigno Valdez, Emilia Achevara and Alfredo Achevara.

PO3 Baltazar de Peralta stated that he was assigned to Santiago, Ilocos Sur. He testified that at about 9:00 a.m. of April 22, 1995, he was on board his motorcycle at the waiting shed erected on the eastern side of the national highway in Tablac, Ilocos Sur. He was about to go southward, but waited a while to let a southbound passenger jeep pass by. Then he followed behind the passenger jeep.

When the passenger jeep was about 75 meters away from him on the western lane of the national highway, PO3 De Peralta spotted an owner-type jeep coming from the south on the eastern lane of the road. He observed that the owner-type jeep was running in a zigzag manner as it went over the many holes on the road. It did not slacken speed, causing the jeep's front wheels to wiggle, before it bumped the passenger jeep coming from the north. The collision occurred on the lane of the passenger jeep, about two feet away from the center line of the road, causing the owner-type jeep to turn around and return to its former position, with its right wheel removed; while the passenger jeep veered to the right lane.[14]

After the collision, PO3 De Peralta assisted the owner-type jeep's driver, who fell to the ground, and helped load him into a tricycle that would take him to the hospital. Then he went to the driver of the passenger jeep and asked him what happened. The driver remarked, "Even if you do not like to meet an accident, if that is what happened, you cannot do anything." Thereafter, PO3 De Peralta proceeded on his way southward. He reported the incident at the Police Station of Candon, Ilocos Sur.[15]

PO3 De Peralta testified that the accident happened on a straight part of the highway, but there were many holes on the eastern lane. He stated that nothing impeded his view of the incident.[16]

PO3 De Peralta also testified that he had known respondents' witness, Alfredo Gamera, who was his barangay mate for 20 years. He declared that he never saw Gamera at the waiting shed or at the scene of the incident on the morning of April 22, 1995.[17]

Investigator SPO2 Marvin Valdez of the Candon Police Station testified that at about 11:00 a.m. of April 22, 1995, he received a report of the vehicular accident that occurred at the national highway in Tablac, Candon, Ilocos Sur, which was three kilometers from the police station. He proceeded to the site with some companions. He saw a passenger jeep positioned diagonally on the western shoulder of the road facing southwest, while an owner-type jeep was on the right lane. The driver of the owner-type jeep was seriously injured and was brought to the hospital.[18]

SPO2 Valdez testified that the owner-type jeep's right tire was detached, and its left front portion was damaged, while the passenger jeep's left tire was detached, and its left side portion was damaged.[19]

Herminigildo Pagaduan testified that at 7:00 a.m. of April 22, 1995, he was at the house of Barangay Captain Victorino Gacusan of San Antonio, Candon, Ilocos Sur. Gacusan was then the overall monitor of the jueteng joint operation in Candon, Ilocos Sur. Pagaduan and Gacusan had earlier agreed to attend the wake of an army captain at Tamorong, Candon, Ilocos Sur that morning. While Pagaduan was waiting for Barangay Captain Gacusan, the latter made a phone call requesting for a vehicle to take them to Tamorong. Not long after, a yellow owner-type jeep arrived, which was driven by Arnulfo Ramos, an employee of the jueteng joint. All of them rode the jeep with Plate No. ACG 713. Barangay Captain Gacusan was on the driver's seat, Pagaduan sat beside Gacusan, while Arnulfo Ramos and the others sat on the rear seat.[20]

Pagaduan further testified that the group headed west to Tamorong via Darapidap. When they reached a bridge, Barangay Captain Gacusan tried to increase the speed of the jeep, but it suddenly wiggled. Gacusan stopped the jeep, and they all alighted from it. Gacusan told Arnulfo Ramos to have the mechanical defect repaired at the auto shop. Hence, they did not proceed to Tamorong, but returned to the house of Gacusan by tricycle. The next day, he heard from Gacusan that the jeep they had used in their aborted trip to Tamorong met an accident.[21]

On cross-examination, Pagaduan testified that it was defense counsel Atty. Tudayan who requested him to testify, because Atty. Tudayan had heard him discuss the incident with some jueteng employees.[22]

Petitioner Benigno Valdez testified that on April 22, 1995, he was driving the passenger jeep of his aunt,

Crescencia Acevara, on the national highway in Tablac, Candon, Ilocos Sur heading south, while the owner-type jeep of Arnulfo Ramos was heading north. Valdez stated that the owner-type jeep was wiggling and running fast in a zigzag manner, when its right front wheel got detached and the owner-type jeep bumped the left side of his passenger jeep. Valdez swerved the passenger jeep to the western edge of the road to avoid a collision, but to no avail, as it bumped a post. He passed out. When he regained consciousness, he saw the driver of the owner-type jeep being rescued.[23]

Valdez surrendered himself to the Police Station in Candon, Ilocos Sur. He informed the police that his vehicle was bumped by the owner-type jeep driven by Arnulfo Ramos, and he showed his driver's license to the police.[24]

Valdez branded as false the testimony of respondents' witness, Alfredo Gamera, that the former tried to overtake the motorcycle of PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Valdez testified that before the vehicular accident, he saw a policeman following him, but there was a tricycle between them. He denied that he was driving fast and stated that his speed at that time registered only 20 on the speedometer.[25]

Petitioner Alfredo Acevara testified that Crescencia Acevara was his wife, while Benigno Valdez was the nephew of his wife. He and his wife owned the passenger jeep with Plate No. DKK-995 that was involved in the vehicular accident. Valdez had been the driver of the vehicle since 1992, although he drove it only during daytime.[26]

Alfredo Acevara declared that before they employed Benigno Valdez to drive the passenger jeep, the former exercised the diligence of a good father of a family in selecting, training and supervising the latter.[27] They required Valdez to show them his professional driver's license, and investigated his personal background and training/experience as a driver. For his apprenticeship, they required him to drive from Metro Manila to Tagaytay City, and then back to Metro Manila for a day.

Acevara stated that he knew Benigno Valdez since 1988. As their driver since 1992, Valdez never committed any traffic violation. On April 22, 1995, he handed the key of the jeep to Valdez at about 7:30 a.m. at their barangay in Padoil, Sta. Cruz, Ilocos Sur to fetch the sound system in Santiago, Ilocos Sur for their fiesta. He told Valdez to avoid an accident, bring his license and avoid being hot-tempered.[28]

On February 14, 2000, the RTC of Narvacan, Ilocos Sur, Branch 22, rendered a Decision in Civil Case No. 1431-N in favor of respondents.

The trial court found that the testimony of respondents' witness, Alfredo Gamera, was controverted by the testimony of PO3 Baltazar de Peralta and the finding of police investigator SPO2 Marvin Valdez. Gamera testified that the vehicular accident occurred because the passenger jeep tried to overtake the motorcycle driven by PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Gamera's testimony was, however, refuted by PO3 Baltazar de Peralta, who testified that the passenger jeep did not overtake his motorcycle since he was the one following behind the passenger jeep. Hence, the trial court concluded that the passenger jeep did not encroach on the lane of the owner-type jeep on the left side of the road to allegedly overtake the motorcycle.

Moreover, Gamera testified that the collision occurred on the lane of the owner-type jeep, and one of the wheels of the owner-type jeep was detached, so that it stayed immobile at the place of collision, about two meters east from the center line of the national highway. However, SPO2 Marvin Valdez, who investigated the incident, found both vehicles on the western lane of the national highway. Thus, the trial court stated that it was undeniable

that the collision took place on the western lane of the national highway, which was the passenger jeep's lane.

The trial court held that, as contended by respondents, the doctrine of last clear chance was applicable to this case. It cited *Picart v. Smith*,^[29] which applied the said doctrine, thus, where both parties are guilty of negligence, but the negligent act of one succeeds that of the other by an appreciable interval of time, the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.

The trial court held that the driver of the passenger jeep, Benigno Valdez, having seen the risk exhibited by the wiggling of the front wheels of the owner-type jeep, causing it to run in a zigzag manner, should have parked his vehicle on the right shoulder of the road so that the mishap could have been prevented. Since he ignored to take this reasonable precaution, the omission and/or breach of this duty on his part was the constitutive legal cause of the mishap.^[30]

The trial court stated that the doctrine of last clear chance, as applied to this case, implied a contributory negligence on the part of the late Arnulfo Ramos, who knew of the mechanical defect of his vehicle.

Further, the trial court held that the evidence of the Spouses Achevara failed to show that they exercised due diligence in the selection and supervision of Benigno Valdez as driver of their passenger jeep.^[31]

The dispositive portion of the trial court's Decision reads:

WHEREFORE, a decision is hereby rendered in favor of the plaintiffs and against the defendants, the latter to account for and to pay jointly and solidarily to the plaintiffs, because of the contributory negligence on the part of the late Arnulfo Ramos, the reduced amount itemized as follows to wit:

- 1) Thirty Thousand Pesos (P30,000.00) - part of the total receipted expenses at the hospitals;
- 2) Twenty Thousand Pesos (P20,000.00) - for funeral expenses;
- 3) Sixty Thousand Pesos (P60,000.00) - for moral damages;
- 4) Fifty Thousand Pesos (P50,000.00) - for exemplary damages;
- 5) Thirty Thousand Pesos (P30,000.00) - for attorney's fees, and
- 6) Ten Thousand Pesos (P10,000.00) - for actual and other costs of litigation.^[32]

The Spouses Achevara and Benigno Valdez appealed the trial court's Decision to the Court of Appeals.

In a Decision dated April 25, 2009, the Court of Appeals affirmed with modification the Decision of the trial court, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the assailed February 14, 2000 Decision of the RTC of Narvacan, Ilocos Sur, Branch 22, in Civil Case No. 1431-N, is hereby AFFIRMED with MODIFICATION, that in addition to other awards made by the trial court, defendants-appellants are hereby ordered to pay, jointly and severally, the plaintiffs-appellees the sum of P50,000.00 as indemnity for the death of Arnulfo Ramos and the moral damages and attorney's fees awarded by the trial court are hereby REDUCED to P50,000.00 and P10,000.00, respectively, while the awards made by the trial court for exemplary damages and "for actual and other costs of litigation" are hereby DELETED.^[33]

The motion for reconsideration of the Spouses Achevara and Benigno Valdez was denied for lack of merit by the Court of Appeals in a Resolution^[34] dated October 23, 2006.

Hence, the Spouses Achevara and Benigno Valdez filed this petition.

The main issue is whether or not petitioners are liable to respondents for damages incurred as a result of the vehicular accident.

Petitioners contend that the doctrine of last clear chance is not applicable to this case, because the proximate cause of the accident was the negligence of the late Arnulfo Ramos in knowingly driving the defective owner-type jeep. When the front wheel of the owner-type jeep was removed, the said jeep suddenly encroached on the western lane and bumped the left side of the passenger jeep driven by Benigno Valdez. Considering that the interval between the time the owner-type jeep encroached on the lane of Valdez to the time of impact was only a matter of seconds, Valdez no longer had the opportunity to avoid the collision. *Pantranco North Express Inc. v. Besa*[35] held that the doctrine of last clear chance "can never apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered."

Petitioners assert that Arnulfo Ramos' negligence in driving the owner-type jeep – despite knowledge of its mechanical defect, and his failure to have it repaired first before driving, to prevent damage to life and property – did not only constitute contributory negligence. Ramos' negligence was the immediate and proximate cause of the accident, which resulted in his untimely demise. Benigno Valdez should not be made to suffer the unlawful and negligent acts of Ramos. Since foreseeability is the fundamental basis of negligence, Valdez could not have foreseen that an accident might happen due to the mechanical defect in the vehicle of Ramos. It was Ramos alone who fully knew and could foresee that an accident was likely to occur if he drove his defective jeep, which indeed happened. Hence, the proximate cause of the vehicular accident was the negligence of Ramos in driving a mechanically defective vehicle.

In short, petitioners contend that Arnulfo Ramos' own negligence in knowingly driving a mechanically defective vehicle was the immediate and proximate cause of his death, and that the doctrine of last clear chance does not apply to this case.

Petitioners' arguments are meritorious.

The Court notes that respondents' version of the vehicular accident was rebutted by petitioners. The testimony of respondents' witness, Alfredo Gamera, that the vehicular accident occurred because the passenger jeep driven by Benigno Valdez tried to overtake the motorcycle driven by PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep, which resulted in the collision, was refuted by PO3 Baltazar de Peralta, who testified that the passenger jeep did not overtake his motorcycle since he was the one following behind the passenger jeep. Hence, the trial court correctly concluded that the passenger jeep did not encroach on the lane of the owner-type jeep on the left side of the road to allegedly overtake the motorcycle.

Gamera also testified that the collision took place on the lane of the owner-type jeep, and one of its wheels was detached and stayed immobile at the place of collision, about two meters east the center line of the national highway. However, SPO2 Marvin Valdez, who investigated the incident, found both vehicles on the western lane of the national highway. The owner-type jeep was diagonally positioned on the right, western lane; while the passenger jeep was on the western shoulder of the road, diagonally facing southwest. The trial court, therefore, correctly held that it was undeniable that the collision took place on the western lane of the national highway or the lane of the passenger jeep driven by Benigno Valdez. It was the owner-type jeep driven by Arnulfo Ramos that encroached on the lane of the passenger jeep.

It must be pointed out that Herminigildo Pagaduan testified that in the early morning of April 22, 1995, he and Barangay Captain Gacusan, along with Arnulfo Ramos, aborted their trip to Tamarong, Candon, Ilocos Sur, using the same owner-type jeep because it was wiggling. Ramos was advised to have the mechanical defect repaired.

Yet, later in the morning, Ramos was driving the owner-type jeep on the national highway in Candon. Benigno Valdez testified that the owner-type jeep was wiggling and running fast in a zigzag manner when its right front wheel got detached, and the owner-type jeep suddenly bumped the passenger jeep he was driving, hitting the left side of the passenger jeep opposite his seat. Although Valdez swerved the passenger jeep to the western edge of the road, it was still hit by the owner-type jeep.

Foreseeability is the fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks.[36]

Seeing that the owner-type jeep was wiggling and running fast in a zigzag manner as it travelled on the opposite side of the highway, Benigno Valdez was made aware of the danger ahead if he met the owner-type jeep on the road. Yet he failed to take precaution by immediately veering to the rightmost portion of the road or by stopping the passenger jeep at the right shoulder of the road and letting the owner-type jeep pass before proceeding southward; hence, the collision occurred. The Court of Appeals correctly held that Benigno Valdez was guilty of inexcusable negligence by neglecting to take such precaution, which a reasonable and prudent man would ordinarily have done under the circumstances and which proximately caused injury to another.

On the other hand, the Court also finds Arnulfo Ramos guilty of gross negligence for knowingly driving a defective jeep on the highway. An ordinarily prudent man would know that he would be putting himself and other vehicles he would encounter on the road at risk for driving a mechanically defective vehicle. Under the circumstances, a prudent man would have had the owner-type jeep repaired or would have stopped using it until it was repaired. Ramos was, therefore, grossly negligent in continuing to drive on the highway the mechanically defective jeep, which later encroached on the opposite lane and bumped the passenger jeep driven by Benigno Valdez. Gross negligence is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property.[37] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[38]

The acts of negligence of Arnulfo Ramos and Benigno Valdez were contemporaneous when Ramos continued to drive a wiggling vehicle on the highway despite knowledge of its mechanical defect, while Valdez did not immediately veer to the rightmost side of the road upon seeing the wiggling vehicle of Ramos – perhaps because it still kept to its lane and Valdez did not know the extent of its mechanical defect. However, when the owner-type jeep encroached on the lane of the passenger jeep, Valdez realized the peril at hand and steered the passenger jeep toward the western shoulder of the road to avoid a collision. It was at this point that it was perceivable that Ramos must have lost control of his vehicle, and that it was Valdez who had the last opportunity to avoid the collision by swerving the passenger jeep towards the right shoulder of the road.

The doctrine of last clear chance applies to a situation where the plaintiff was guilty of prior or antecedent negligence, but the defendant – who had the last fair chance to avoid the impending harm and failed to do so – is made liable for all the consequences of the accident, notwithstanding the prior negligence of the plaintiff.[39] However, the doctrine does not apply where the party charged is required to act instantaneously, and the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered.[40]

The doctrine of last clear chance does not apply to this case, because even if it can be said that it was Benigno Valdez who had the last chance to avoid the mishap when the owner-type jeep encroached on the western lane of the passenger jeep, Valdez no longer had the opportunity to avoid the collision. The Answer of petitioners stated that when the owner-type jeep encroached on the lane of the passenger jeep, Benigno Valdez maneuvered his vehicle towards the western shoulder of the road to avoid a collision, but the owner-type jeep driven by Ramos

continued to move to the western lane and bumped the left side of the passenger jeep. Thus, petitioners assert in their Petition that considering that the time the owner-type jeep encroached on the lane of Valdez to the time of impact was only a matter of seconds, he no longer had the opportunity to avoid the collision. Although the records are bereft of evidence showing the exact distance between the two vehicles when the owner-type jeep encroached on the lane of the passenger jeep, it must have been near enough, because the passenger jeep driven by Valdez was unable to avoid the collision. Hence, the doctrine of last clear chance does not apply to this case.

Article 2179 of the Civil Code provides:

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.[41]

In this case, both Arnulfo Ramos and Benigno Valdez failed to exercise reasonable care and caution that an ordinarily prudent man would have taken to prevent the vehicular accident. Since the gross negligence of Arnulfo Ramos and the inexcusable negligence of Benigno Valdez were the proximate cause of the vehicular accident, respondents cannot recover damages pursuant to Article 2179 of the Civil Code.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 67027, dated April 25, 2006, and its Resolution dated October 23, 2006, are hereby REVERSED and SET ASIDE.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Docketed as Civil Case No. 1431-N.

[3] 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.

[4] Records, pp. 1-5.

[5] Id. at 11-15.

[6] TSN, March 22, 1996, pp. 2-5.

[7] Id. at 2; TSN, July 19, 1996, p. 16.

[8] TSN, July 19, 1996, pp. 2, 4-5, 8-9.

[9] TSN, August 23, 1996, pp. 4-10.

[10] Death Certificate, records, p. 140.

[11] TSN, June 7, 1996, pp. 5-8.

[12] Exhibit "M," records, p. 145.

- [13] TSN, June 7, 1996, p. 17.
- [14] TSN, June 20, 1997, pp. 2-6.
- [15] *Id.* at 3-4, 9, 10, 14.
- [16] *Id.* at 10.
- [17] *Id.* at 4-5.
- [18] TSN, July 28, 1997, pp. 2-3.
- [19] *Id.* at 4-5.
- [20] TSN, August 18, 1997, pp. 2-5.
- [21] *Id.* at 5-6.
- [22] *Id.* at 11.
- [23] TSN, September 5, 1997, pp. 2-6, 8; TSN, September 19, 1997, p. 20.
- [24] TSN, September 5, 1997, pp. 6-7.
- [25] TSN, September 5, 1997, pp. 9-10; TSN, September 19, 1997, p. 12.
- [26] TSN, April 16, 1999, pp. 2-4.
- [27] *Id.* at 2.
- [28] *Id.* at 5-6.
- [29] 37 Phil. 809 (1918).
- [30] Records, pp. 69-70.
- [31] *Id.* at 71.
- [32] *Id.* at 72-73.
- [33] Rollo, pp. 36-37.
- [34] *Id.* at 38.
- [35] G.R. Nos. 79050-51, November 14, 1989, 179 SCRA 384.
- [36] Jarencio, Jarencio on Torts and Damages, p. 138.
- [37] *National Power Corporation v. Heirs of Noble Casionan*, G.R. No. 165969, November 27, 2008.
- [38] *Id.*
- [39] *Pantranco v. North Express, Inc.*, G.R. Nos. 79050-51, November 14, 1989, 179 SCRA 384.
- [40] *Id.*, citing *Ong v. Metropolitan Water District*, 104 Phil. 397 (1958).
- [41] Emphasis supplied.

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