

CONSTANCIA G. TAMAYO, JOCELYN G. TAMAYO, AND ARAMIS G. TAMAYO, COLLECTIVELY KNOWN AS HEIRS OF CIRILO TAMAYO, PETITIONERS, VS. ROSALIA ABAD SEÑORA, ROAN ABAD SEÑORA, AND JANETE A...

G.R. No. 176946. November 15, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court. Petitioners Constancia G. Tamayo (Constancia), Jocelyn G. Tamayo, and Aramis G. Tamayo are assailing the Decision[1] dated March 22, 2006 and the Resolution[2] dated February 6, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 63171. The CA affirmed, with modification, the decision[3] of the Regional Trial Court (RTC) of Parañaque City in Civil Case No. 96-0339.

The factual antecedents, as found by the RTC and affirmed by the CA, are as follows:

On September 28, 1995, at about 11:00 a.m., Antonieto M. Señora (Señora), then 43 years old and a police chief inspector of the Philippine National Police (PNP),[4] was riding a motorcycle and crossing the intersection of Sucat Road towards Filipinas Avenue, when a tricycle allegedly bumped his motorcycle from behind. As a result, the motorcycle was pushed into the path of an Isuzu Elf Van (delivery van), which was cruising along Sucat Road and heading towards South Superhighway. The delivery van ran over Señora, while his motorcycle was thrown a few meters away. He was recovered underneath the delivery van and rushed to the Medical Center of Parañaque, where he was pronounced dead on arrival.[5]

The tricycle was driven by Leovino F. Amparo (Amparo), who testified that it was the delivery van that bumped Señora's motorcycle. He said that he did not see how the motorcycle could have been hit by his tricycle since he was looking at his right side, but when he heard a sound, he looked to his left and saw Señora already underneath the delivery van. He also said that when he was brought to the police station for investigation, he brought his tricycle to disprove the claim of the delivery van driver by showing that his tricycle sustained no damage.[6]

The delivery van, on the other hand, was driven by Elmer O. Polloso (Polloso) and registered in the name of Cirilo Tamayo (Cirilo). While trial was ongoing, Cirilo was suffering from lung cancer and was bedridden. His wife, petitioner Constancia, testified on his behalf. Constancia narrated that she and her husband were managing a single proprietorship known as Tamayo and Sons Ice Dealer. She testified that it was Cirilo who hired their drivers. She claimed that, as employer, her husband exercised the due diligence of a good father of a family in the selection, hiring, and supervision of his employees, including driver Polloso. Cirilo would tell their drivers not to drive fast and not to be too strict with customers.[7]

One of Cirilo's employees, Nora Pascual (Pascual), also testified. She alleged that she was working as auditor and checker for Tamayo and Sons Ice Dealer. She testified that she and another employee were with Polloso in the

delivery van at the time of the incident. She narrated that, while they were traversing Sucat Road, she saw a motorcycle going towards Filipinas Avenue. Pascual said that, when they reached the intersection of Sucat Road and Filipinas Avenue, Polloso blew the horn. She then saw a tricycle bump the rear of the motorcycle. She said that Polloso stopped the delivery van. When they alighted, they saw the motorcycle already under the delivery van. Pascual further testified that Polloso was a careful driver who drove the truck slowly and followed traffic rules. She also said that Cirilo called for a meeting before the delivery trucks left and told his drivers to be careful in their driving and to be courteous to their customers.[8]

On March 2, 1999, the court rendered a decision, the dispositive portion of which reads:

WHEREFORE, defendants Leovino F. Amparo, Elmer O. Polloso and Cirilo Tamayo are found liable jointly and severally to plaintiffs and ordered to pay the latter the amounts of P105,100.00 for actual damages, P50,000.00 for loss of life, P1,152,360.00 for loss of earnings and P30,000.00 for attorney's fees.

SO ORDERED.[9]

The RTC found Polloso guilty of negligence. It held that Polloso failed to slow down or come to a full stop at the intersection, causing the delivery van to run over Señora. The RTC also found that the truck was traveling fast on the outer lane, the lane customarily considered to be for slow-moving vehicles.[10]

The RTC held Amparo similarly guilty of negligence. It found that the tricycle had bumped into Señora's motorcycle and pushed it towards the truck's path. It said that the statement to that effect made by witness Pascual was made immediately after the accident and could be considered a "spontaneous reaction to a startling occurrence." [11]

However, the RTC said that, even if the tricycle bumped into Señora's motorcycle from behind, the collision could have been avoided had Polloso observed the elementary rule of driving that one must slow down, or come to a full stop, when crossing an intersection.[12]

In addition, the RTC found Cirilo to be solidarily liable for Señora's death. It held that Constancia's testimony was hearsay and unsupported by any documentary evidence. The RTC also brushed aside Pascual's testimony because, as checker and auditor, she had no participation in hiring the company's drivers. Thus, Cirilo was held vicariously liable for the acts and omissions of Polloso.[13]

Finally, in determining the liability for loss of income, the RTC modified the formula in determining life expectancy, $\frac{2}{3} \times (80 - \text{age of victim at the time of death})$. The RTC considered the retirement age of the members of the PNP, which was 55 years old. Thus, the formula that the RTC used was $\frac{2}{3} \times (55 - \text{age of the victim at the time of death})$.

On appeal, the CA affirmed the RTC's decision, but modified the finding on the deceased's net earning capacity. The CA used the formula:

Net earning capacity = life expectancy x gross annual income less living expenses[14]

with life expectancy computed as $\frac{3}{4}$

$\frac{2}{3} \times (80 - \text{age of deceased})$ [15]

and living expenses fixed at half of the victim's gross income.

Thus, Señora's net earning capacity was computed to be P1,887,847.00.[16]

The CA disposed of the case in this wise:

WHEREFORE, the Decision dated March 2, 1999 rendered by the Regional Trial Court of Parañaque City, Branch 257 is AFFIRMED with the MODIFICATION as to the amount representing loss of earnings to P1,887,847.00

SO ORDERED.[17]

Petitioners' Motion for Reconsideration was denied in a Resolution dated February 6, 2007.[18]

Petitioners are now before this Court, assailing the CA's Decision and Resolution. They raise the issues of who was negligent in the incident and what was the proximate cause of Señora's death.[19] In particular, they submit the following Assignment of Errors:

I

THE HONORABLE COURT OF APPEALS GR[IE]VOUSLY ERRED IN HOLDING DEFENDANT ELMER POLLOSO NEGLIGENT UNDER THE OBTAINING CIRCUMSTANCES.

II

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED IN DECLARING THE JOINT NEGLIGENCE OF DEFENDANTS LEOVINO AMPARO AND ELMER POLLOSO TO BE THE PROXIMATE CAUSE OF THE DEATH OF ANTONIETO SEÑORA.

III

THE HONORABLE COURT OF APPEALS ERRED IN ADJUDGING DEFENDANT CIRILO TAMAYO SOLIDARILY LIABLE FOR THE DEATH OF ANTONIETO SEÑORA.[20]

The petition has no merit and is hereby denied.

As a rule, the jurisdiction of this Court in cases brought to it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court.[21]

The issues raised by petitioners are questions of fact necessarily calling for a reexamination and reevaluation of the evidence presented at the trial.

A question of fact arises when the doubt or difference pertains to the truth or falsehood of alleged facts, or when the query necessarily solicits calibration of the whole evidence, considering the credibility of witnesses, the existence and relevance of specific circumstances, and their relation to one another and to the whole situation.[22]

The Court has consistently ruled that findings of fact of trial courts are entitled to great weight and should not be disturbed, except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of witnesses while testifying. It is not a function of this Court to analyze and weigh evidence all over again.[23] The factual findings of the CA affirming those of the trial court are final and conclusive;[24] hence, they are binding on this Court.

The Court will not disturb such factual findings unless there are compelling or exceptional reasons.[25] No such reasons exist in this case.

The Court holds that the RTC and the CA correctly found Polloso negligent.

To be credible, testimonial evidence should not only come from the mouth of a credible witness but it should also be credible, reasonable, and in accord with human experience.[26] It should be positive and probable such that it is difficult for a rational mind not to find it credible.[27]

If, as Pascual testified, the truck stopped when the tricycle bumped the motorcycle from behind,[28] then there would have been no accident. Even if the motorcycle was nudged into the path of the truck, as she claimed, there would have been no impact if the truck itself was not moving, and certainly not an impact that would pin the motorcycle's driver under the truck and throw the motorcycle a few meters away.

The Court likewise finds that the CA did not err in upholding Cirilo's solidary liability for Señora's death. The RTC correctly disregarded the testimonies of Cirilo's wife and his employee, leaving no other evidence to support the claim that he had exercised the degree of diligence required in hiring and supervising his employees.

Finally, the Court sustains the award for loss of earning capacity by the CA.

The award of damages for loss of earning capacity is concerned with the determination of losses or damages sustained by respondents, as dependents and intestate heirs of the deceased. This consists not of the full amount of his earnings, but of the support which they received or would have received from him had he not died as a consequence of the negligent act. Thus, the amount recoverable is not the loss of the victim's entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received.[29]

Indemnity for loss of earning capacity is determined by computing the net earning capacity of the victim.[30]

The CA correctly modified the RTC's computation. The RTC had misapplied the formula[31] generally used by the courts to determine net earning capacity, which is, to wit:

Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses).

Life expectancy shall be computed by applying the formula $(2/3 \times [80 - \text{age at death}])$ adopted from the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality.[32] Hence, the RTC erred in modifying the formula and using the retirement age of the members of the PNP instead of "80."

On the other hand, gross annual income requires the presentation of documentary evidence for the purpose of proving the victim's annual income.[33] The victim's heirs presented in evidence Señora's pay slip from the PNP, showing him to have had a gross monthly salary of P12,754.00.[34] Meanwhile, the victim's net income was correctly pegged at 50% of his gross income in the absence of proof as regards the victim's living expenses.[35]

Consequently, the Court sustains the award of P1,887,847.00 as damages for loss of earning capacity. All other aspects of the assailed Decision are affirmed.

WHEREFORE, the foregoing premises considered, the Decision dated March 22, 2006 and the Resolution dated February 6, 2007 of the Court of Appeals in CA-G.R. CV No. 63171 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Rebecca de Guia-Salvador, concurring; rollo, pp. 32-50.

[2] Id. at 51-52.

[3] Penned by Judge Rolando G. How; CA rollo, pp. 72-78.

[4] Id. at 72-73.

[5] Id. at 72.

[6] Id. at 74.

[7] Id. at 75.

[8] Id. at 75-76.

[9] Id. at 78.

[10] Id. at 76.

[11] Id. at 77.

[12] Id.

[13] Id.

[14] Rollo, p. 49.

[15] Id.

[16] Id. at 50.

[17] Id.

[18] Id. at 51-52.

[19] Id. at 10.

[20] Id. at 18-19.

[21] Romago Electric Co., Inc. v. Court of Appeals, 388 Phil. 964, 975 (2000).

[22] Marcelo v. Bungubung, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 605-606, citing Secretary of Education, The v. Heirs of Rufino Dulay, Sr., G.R. No. 164748, January 27, 2006, 480 SCRA 452, 460.

[23] Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation, G.R. No. 141715, October 12, 2005, 472 SCRA 445, 451, citing Uriarte v. People, 403 Phil. 513, 519 (2001).

[24] Larena v. Mapili, 455 Phil. 944, 950 (2003).

[25] Spouses Francisco v. Court of Appeals, 449 Phil. 632, 647 (2003).

[26] People v. Mallari, 452 Phil. 210, 220 (2003), citing People v. Atad, 334 Phil. 235, 248 (1997); People v. Gonzales, 396 Phil. 11, 30 (2000); People v. Magallano, 334 Phil. 276, 283 (1997).

[27] See People v. Del Mundo, G.R. No. 169141, December 6, 2006, 510 SCRA 554.

[28] TSN, December 10, 1997, p. 871.

[29] Candano Shipping Lines, Inc. v. Sugata-on, G.R. No. 163212, March 13, 2007, 518 SCRA 221, 236, citing Villa Rey Transit, Inc. v. Court of Appeals, 31 SCRA 511.

[30] People v. Garcia, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 640.

[31] Candano Shipping Lines, Inc. v. Sugata-on, *supra* note 29, at 235.

[32] Id. at 235-236, citing *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 393 (2005).

[33] *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598, 615.

[34] Records, p. 160.

[35] *Licyayo v. People*, *supra* note 33, at 616.

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