

CRESENCIO BAÑO AND HEIRS OF THE DECEASED AMANCIO ASUMBRADO, NAMELY: ROSALINDA ASUMBRADO, VICENTE ASUMBRADO, ROEL ASUMBRADO, ANNALYN ASUMBRADO, ARNIEL ASUMBRADO, ALFIE ASUMBRADO ...

G.R. No. 191703. March 12, 2012

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This petition for review under Rule 45 of the Rules of Court assails the February 20, 2009 Decision[1] and February 9, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00190, which reduced the amount of damages awarded to petitioners by the Regional Trial Court (RTC) of Tagum City, Branch 30 in its June 30, 2004 Decision.[3]

The Facts

In the early afternoon of November 6, 1993, respondent Wenifredo Salvaña (Salvaña) was driving the bus owned by respondent Bachelor Express, Inc./Ceres Liner, Inc. with plate number LVD-273 and body number 4042 (Bus 4042) along the national highway at Magdum, Tagum City bound for Davao City. At about 1:20 in the afternoon, he overtook a Lawin PUJ jeepney while negotiating a blind curve in a descending road at Km. 60, causing him to intrude into the opposite lane and bump the 10-wheeler Hino dump truck of petitioner Cresencio Baño (Baño) running uphill from the opposite direction. The collision resulted in damage to both vehicles, the subsequent death of the truck driver, Amancio Asumbrado (Asumbrado), and serious physical injuries to bus driver Salvaña.

On March 11, 1994, Baño and the heirs of Asumbrado (collectively called "petitioners") filed a complaint[4] for quasi-delict, damages and attorney's fees against respondents, accusing Salvaña of negligently driving Bus 4042 causing it to collide with the dump truck.

Respondents denied liability, claiming that prior to the collision, Bus 4042 was running out of control because of a problem in the steering wheel system which could not have been avoided despite their maintenance efforts. Instead, they claimed that Asumbrado had the last clear chance to avoid the collision had he not driven the dump truck at a very fast speed.

The RTC Decision

After due proceedings, the RTC found that the immediate and proximate cause of the accident was the reckless negligence of the bus driver, Salvaña, in attempting to overtake a jeepney along a descending blind curve and completely invading the opposite lane. The photographs taken immediately after the collision, the Traffic Accident and Investigation Report, and the Sketch all showed the dump truck at the shoulder of its proper lane while the bus was positioned diagonally in the same lane with its right side several feet from the center line.

Having established the negligence of its employee, the presumption of fault or negligence on the part of the

employer, respondent Bachelor Express, Inc./Ceres Liner, Inc., arose, which it failed to rebut by evidence that it exercised due diligence in the selection and supervision of its bus driver Salvaña. The RTC thus disposed of the case as follows:

"In View Of All The Foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants; ordering the defendants to solidarity pay:

1. To plaintiff Cresencio Baño -

(a) P700,000.00, as payment for his Hino dump truck which was rendered a total wreck;

(b) P296,601.50 per month, as loss of earning of the Hino dump truck, to be computed from November 6, 1993 with legal interest thereon until the P700,000.00 mentioned in the next preceding number will be fully paid by the defendants to plaintiff Cresencio Baño;

(c) P100,000.00 and P50,000.00, as moral damages and exemplary damages, respectively;

2. To the Heirs of the late Amancio Asumbrado -

(a) P50,000.00, as civil indemnity for the death of Amancio Asumbrado;

(b) P20,268.45, as reimbursement for the medicines, hospitalization and funeral expenses incurred by the late Amancio Asumbrado;

(c) P576,000.00, as loss of earning capacity of the late Amancio Asumbrado;

(d) P100,000.00 and P50,000.00, as moral damages and exemplary damages, respectively;

3. To the Plaintiffs -

(a) P25,000.00, as reimbursement of the expenses incurred initially by them in the preparation of this complaint and other expenses in instituting the suit;

(b) Attorney's fee in the sum of equivalent to 25% of plaintiffs' total claim against the defendants plus P14,500.00, as appearance fees;

(c) Costs of suit. SO ORDERED."[5]

The CA Ruling

On appeal, the CA affirmed the RTC's findings on respondents' negligence and liability for damages, but deleted the separate awards of exemplary damages in favor of petitioners for their failure to prove that respondents acted with gross negligence.

Similarly, the appellate court deleted the awards for the value of and lost income from the dump truck for lack of sufficient basis, awarding in their stead temperate damages in the sums of P100,000.00 and P200,000.00, respectively. The CA also deleted the award of moral damages to Baño for the damage to his property.

With respect to petitioner Heirs, the CA reduced the RTC's awards of actual damages representing the hospital and funeral expenses from P20,268.45 to P19,136.90; loss of earning capacity from P576,000.00 to P415,640.16; and moral damages from P100,000.00 to P50,000.00.

Finally, the appellate court deleted the award of litigation expenses and reduced the award of attorney's fees from 25% of petitioners' claims to P50,000.00.

The Issues Before The Court

In the instant petition, petitioners posit that respondent Salvaña was grossly negligent in continuing to drive the bus even after he had discovered the malfunction in its steering wheel. They further averred that the CA erred in reducing the amounts of damages awarded by the RTC despite sufficient evidence.

The Court's Ruling

While the courts a quo, in their respective decisions, have concurred that the proximate cause of the collision was the negligence of the bus driver, Salvaña, in overtaking the jeepney in front as the bus traversed a curve on the highway, they, however, imputed varied degrees of negligence on him. Thus, although the issue of negligence is basically factual,⁶ the Court may properly pass upon this question under Rule 45 of the Rules of Court.

In the case of *Government Service Insurance System v. Pacific Airways Corporation*,^[7] the Court has defined gross negligence as "one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected."

In the present case, records show that when bus driver Salvaña overtook the jeepney in front of him, he was rounding a blind curve along a descending road. Considering the road condition, and that there was only one lane on each side of the center line for the movement of traffic in opposite directions, it would have been more prudent for him to confine his bus to its proper place. Having thus encroached on the opposite lane in the process of overtaking the jeepney, without ascertaining that it was clear of oncoming traffic that resulted in the collision with the approaching dump truck driven by deceased Asumbrado, Salvaña was grossly negligent in driving his bus. He was remiss in his duty to determine that the road was clear and not to proceed if he could not do so in safety.^[8]

Consequently, the CA erred in deleting the awards of exemplary damages, which the law grants to serve as a warning to the public and as a deterrent against the repetition of similar deleterious actions. However, the award should be tempered as it is not intended to enrich one party or to impoverish another.^[9] Thus, the Court reinstates the separate awards of exemplary damages to petitioners in the amount of P50,000.00.

With respect to Baño, the award of moral damages for the loss of his dump truck was correctly deleted since the damage to his vehicle was not shown to have been made willfully or deliberately.^[10] However, the Court finds the grant of P100,000.00 as temperate damages for the damaged vehicle to be insufficient considering its type as a 10-wheeler dump truck and its good running condition at the time of the incident. Instead, the Court finds the amount of P400,000.00 as fair and reasonable under the circumstances. With respect to the adjudged lost income from the dump truck, the Court sustains, for being just and equitable, the award of temperate damages in the sum of P200,000.00.

On the other hand, the Court upholds the grant to petitioner Heirs of P19,136.90 as actual damages corresponding to the pecuniary loss that they have actually sustained, P50,000.00 as death indemnity, the reduced awards of P50,000.00 as moral damages and P415,640.16 as loss of earning capacity of the deceased Asumbrado, which are all in conformity with prevailing jurisprudence.^[11]

Finally, the attorney's fees of P50,000.00 as awarded by the CA is increased to P100,000.00 considering the length of time that this case had been pending, or a period of about 18 years since the complaint a quo was filed on March 11, 1994.

WHEREFORE, the assailed February 20, 2009 Decision and February 9, 2010 Resolution of the Court of Appeals are **AFFIRMED** with **MODIFICATIONS**. Respondents are ordered to solidarity pay:

- (1) petitioner Heirs of Amancio Asumbrado:
 - (a) P19,136.90 as actual damages representing hospital and funeral expenses;
 - (b) P415,640.16 as loss of earning capacity of the deceased Asumbrado;
 - (c) P50,000.00 as death indemnity;
 - (d) P50,000.00 as moral damages; and

(e) P50,000.00 as exemplary damages.

(2) petitioner Cresencio Baño:

- (a) P400,000.00 as temperate damages for his damaged dump truck;
- (b) P200,000.00 as lost income of the said truck; and
- (c) P50,000.00 as exemplary damages.

(3) attorney's fees of P100,000.00 to petitioners collectively.

SO ORDERED.

Velasco, Jr., (Chairperson) Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson; Rollo, pp. 42-55.

[2] Id. at pp. 96-97.

[3] RTC records, pp. 735-754.

[4] Id. at pp. 1-9.

[5] Supra note 3, at pp. 753-754.

[6] Vallacar Transit, Inc. v. Catubig, G.R. No. 175512, May 30, 2011, 649 SCRA 281.

[7] G.R. No. 170414, August 25, 2010, 629 SCRA 219, 230.

[8] Section 41(a), Republic Act No. 4136 otherwise known as the "Land and Transportation and Traffic Code," as amended provides:

"Section 41. Restrictions on overtaking and passing.

(a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

x x x

[9] Tan v. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011, 639 SCRA 471,485.

[10] B.F. Metal (Corporation) v. Lomotan, G.K.No. 170813, April 16, 2008, 551 SCRA 618,630-631.

[11] OMC Carrier, Inc. v. Nabua, G.R. No. 148974, July 2; 2010, 622 SCRA 624; 630-64J; Philippine Hawk Corporation v. Lee, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 591-592.

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