

PAULITA “EDITH” SERRA,¹ PETITIONER, VS. NELFA T. MUMAR, RESPONDENT.

G.R. No. 193861. March 14, 2012

Ponente: CARPIO, J.

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CARPIO, J.:

Before the Court is a petition for review under Rule 45 of the Revised Rules of Court, assailing the 31 July 2009 Decision[2] and 27 July 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 00023-MIN.

The Facts

At around 6:30 in the evening of 3 April 2000, there was a vehicular accident along the National Highway in Barangay Apopong, General Santos City, which resulted in the death of Armando Mumar (Mumar), husband of respondent Nelfa T. Mumar (respondent).

Based on the evidence presented before the Regional Trial Court (RTC) of General Santos City, one Armando Tenerife (Tenerife) was driving his Toyota Corolla sedan on the National Highway heading in the direction of Polomolok, South Cotabato. Tenerife noticed the van owned by petitioner Paulita “Edith” Serra (petitioner) coming from the opposite direction, which was trying to overtake a passenger jeep, and in the process encroached on his lane. The left side of the sedan was hit by the van, causing the sedan to swerve to the left and end up on the other side of the road. The van collided head on with the motorcycle, which was about 12 meters behind the sedan on the outer lane, causing injuries to Mumar, which eventually led to his death.

On the other hand, petitioner denied that her van was overtaking the jeepney at the time of the incident. She claimed that the left tire of Tenerife’s sedan burst, causing it to sideswipe her van. Consequently, the left front tire of the van also burst and the van’s driver, Marciano de Castro (de Castro), lost control of the vehicle. The van swerved to the left towards Mumar’s motorcycle. The impact resulted in the death of Mumar.

Subsequently, respondent filed a complaint against petitioner for Damages by Reason of Reckless Imprudence resulting to Homicide and Attachment before the General Santos City RTC.

Ruling of the Regional Trial Court

On 20 November 2003, the General Santos City RTC promulgated a judgment,[4] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered against defendant Paulita Sierra, her co-defendant not having been served with summons because he could no longer be found, finding her liable for damages by reason of reckless imprudence, and she is hereby ordered to pay plaintiff the sum of:

- P65,000.00 for burial damages;
- P300,000.00 for loss of income;

- P50,000.00 as moral damages; and
- P50,000.00 as exemplary damages.

SO ORDERED.[5]

The RTC found that, based on the evidence presented at the trial, at the time of impact “the van was overtaking another vehicle without due regard for the safety of others, bumped the Toyota Car (sic) and the motorcycle traveling in the right lane going to Polomolok, South Cotabato.” The RTC noted that the damage to the van was located at the bumper, evincing a frontal collision, while the damage to the sedan was on the left side door and window, evincing that the van sideswiped the sedan. Likewise, the RTC found that the van encroached on the sedan and motorcycle’s lane, in the process hitting the motorcycle, causing the injuries and subsequent death of Mumar.[6]

As to the claim for damages, the RTC said that Nelfa testified that her husband was earning about P6,000.00 a month without presenting any documentary evidence to prove her claim, but nonetheless awarded her P300,000.00 for damages due to loss of income.

Petitioner appealed the RTC ruling to the CA.

Ruling of the Court of Appeals

In its 31 July 2009 Decision, the CA denied the appeal and affirmed with modification the RTC’s ruling:

FOR REASONS STATED, the appeal is DENIED. The assailed Decision of the Regional Trial Court of General Santos City, 11th Judicial Region, Branch 23, in Civil Case No. 6764 is AFFIRMED with MODIFICATION in that the appellant is ordered to pay appellee the following:

1. Civil indemnity in the amount of P50,000.00;
2. Indemnity for loss of earning capacity in the amount of P1,224,000.00;
3. Temperate damages amounting to P25,000.00 in lieu of the award for burial expenses;
4. Moral damages in the amount of P50,000.00.
5. The total amount of damages shall bear an interest of 12% per annum from the finality of this Decision until fully paid.

The awards for burial expenses and exemplary damages are deleted.

SO ORDERED.[7]

The CA adopted the factual findings of the RTC. It also ruled that the RTC erred in awarding burial expenses and actual damages for loss of earning capacity despite lack of proof. Based on the wife’s claim that the victim earned not less than P6,000.00 a month and his age at the time of death, based on his birth certificate (29), the CA applied the formula:

Net earning capacity = $\frac{2}{3} \times (80 \text{ less the age of the victim at time of death}) \times [\text{Gross Annual Income less the Reasonable and Necessary Living Expenses (50\% of gross income)}]$

Using the foregoing formula, the CA awarded damages due to loss of earning capacity in the amount of P1,224,000.00.8

Likewise, the CA said that the RTC erred in not awarding civil indemnity in the amount of P50,000.00. The CA also awarded temperate damages of P25,000.00 finding that respondent spent for her husband’s burial although

the exact amount could not be proven.

Petitioner's Arguments

Petitioner raises the following issues:

- I. Whether or not the (sic) both the lower court and the Court of Appeals committed reversible error in finding that the incident which killed Armando Mumar was not purely accidental for which defendants may not be held liable[;]
- II. Whether or not both the lower court and the Court of Appeals committed reversible error in holding Editha Serra as liable for damages and in not appreciating that she was not negligent in the selection and supervision of the driver of the van, Marciano de Castro[;]
- III. Whether or not the Court of Appeals erred in awarding to herein respondent "loss of earning capacity" despite complete absence of documentary evidence that the deceased Mumar was self-employed and earning less than the minimum wage under current labor laws in force at the time of his death, following the ruling in *People v. Mallari*, G.R. No. 145993, June 17, 2003[.][9]

Petitioner maintains that it was Tenerife's sedan that encroached on the lane of the van after the sedan's left front tire blew out. Petitioner points out that Tenerife himself admitted that what happened was merely a "sliding collision."¹⁰ She points out that the sedan not only cut across two lanes headed in the opposite direction, it also made a half-circle such that it stopped on the shoulder of the left side of the road (opposite its original lane), and then faced towards its origin, General Santos City. This could be for no other reason than that Tenerife completely lost control of his vehicle because the tire burst. Then, the sedan rammed into the van causing the latter's front tire to tear; thus, the van's driver also lost control of the vehicle and headed towards the opposite lane and hit Mumar. Yet, the van was still facing its destination – General Santos City. The greater damage to the van was from hitting the signboard on the side of the road and not from hitting the sedan.

Petitioner argues that the foregoing description of the events proves that it is purely accidental and without negligence on her driver's part.

Petitioner also insists that she was not negligent in the selection and supervision of the driver of the van. Respondent had the burden to prove that petitioner was negligent but failed to do so, petitioner claims.

As to the CA's award of damages due to loss of earning capacity, petitioner argues that the same has no basis. She points out that there was no documentary evidence presented or formally offered at the trial to substantiate the claim for damages due to loss of earning capacity. Likewise, petitioner further argues that, based on Nelfa's testimony that her husband was earning "not less than P6,000 a month," the conclusion was that he was earning not less than the minimum wage at the time of the accident.

Petitioner counters that in 2005 the minimum wage in Region XII, where the accident occurred, was P200.00 per day plus a cost of living allowance of P13.50, or P5,558.00 per month. Petitioner posits that it was safe to assume that at the time of the accident on 3 April 2000, the minimum wage was lower than the rate in 2005.

Petitioner also argues that in Mumar's line of work – contracting and manufacturing steel grills, fences and gates – some form of documentary evidence would be available to support his widow's claim. That these were not presented in evidence would remove the claim from the exceptions to the requirement that the amount of actual damages must be duly proved.[¹¹]

Thus, petitioner prays that the assailed CA decision and resolution be reversed and set aside. In the alternative, petitioner prays that, should the Court sustain the finding of negligence, that the award of damages for loss of

earning capacity in the sum of P1,224,000.00 be completely deleted for lack of evidentiary basis.[12]

Respondent's Argument

In her Comment, respondent counters that petitioner raises no new matter, and the arguments are merely a rehash of those raised before the lower courts, which had already ruled on these.[13]

The Court's Ruling

The petition is partly granted. The Court affirms the decision of the CA, but modifies the award for damages.

Uniform Findings of Fact by the RTC and CA

A petition for review on certiorari should raise only questions of law. In resolving a petition for review, the Court "does not sit as an arbiter of facts for it is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below." [14]

When supported by substantial evidence, the factual findings of the CA affirming those of the trial court [15] are final and conclusive on this Court and may not be reviewed on appeal, [16] unless petitioner can show compelling or exceptional reasons [17] for this Court to disregard, overturn or modify such findings.

In the present case, the Court notes the uniform factual findings by the RTC and CA, and petitioner has not shown compelling or exceptional reasons warranting deviation from these findings.

Both the trial court and the CA found that it was petitioner's van, then being driven by de Castro, that encroached on the sedan's lane, then hit the latter and, eventually, Mumar's motorcycle.

The Court has previously held that evidence to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. The evidence must be natural, reasonable and probable as to make it easy to believe. No better test has yet been found to determine the value of the testimony of a witness than its conformity to the knowledge and common experience of mankind. [18]

Petitioner's testimony is not credible considering that she admitted that she did not see the actual bumping of the van with the sedan because "it was dark and showering." [19] When she came out of the van, she said she did not notice the sedan. She then left the scene to ask help from her brother, without even coming to the aid of her driver. [20]

Moreover, the traffic investigator's findings are more consistent with human experience.

As found by the investigator, the van ended up on the other side of the road, opposite the lane it was originally traversing. The van's forward momentum was going towards the opposite side. If indeed the van stayed on its proper lane when the sedan's tire blew out and lost control, the sedan would have bumped into the van on the latter's lane and the van would have ended up on the side of the road with the sedan. Likewise, if the van had stayed on its lane, and the impact of the sedan propelled it forward, the van would have hit the jeepney in front of it, not Mumar's motorcycle, which was on the opposite lane to the right of the sedan. The only plausible explanation is it was the van, while trying to overtake the jeepney in front of it at a fast speed, that bumped into the sedan and subsequently, Mumar's motorcycle.

Petitioner insists that the traffic investigator SPO3 Haron Abdullatip's report should be disregarded because he was not at the scene when the accident happened.

Rarely does it happen that the investigating officer personally witnesses an accident that he investigates, yet this does not mean that his observations are not valid. A traffic investigator's training and experience allow him to determine how an accident occurred even without witnessing the accident himself.

In this case, Abdullatip had been a traffic investigator for nine years.[21] Even if he arrived at the scene after the accident, he saw the vehicles in their relative positions as a result of the accident. His experience, as well as his evaluation of the statements from various witnesses, guided him in assessing who was at fault. In any case, the presumption of regularity in the exercise of functions is in his favor and therefore his report must be given credence.

Liability for Damages of Petitioner

Under Article 2180 of the Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees.[22] The liability of the employer is direct or immediate. It is not conditioned upon prior recourse against the negligent employee and a prior showing of insolvency of such employee.[23]

Moreover, under Article 2184 of the Civil Code,[24] if the causative factor was the driver's negligence, the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence.

Petitioner failed to show that she exercised the level of diligence required in supervising her driver in order to prevent the accident. She admitted that de Castro had only been her driver for one year and she had no knowledge of his driving experience or record of previous accidents. She also admitted that it was de Castro who maintained the vehicle and would even remind her "to pay the installment of the car." [25]

Petitioner also admitted that, at the time of the accident, she did not know what was happening and only knew they bumped into another vehicle when the driver shouted. She then closed her eyes and a moment later felt something heavy fall on the roof of the car. When the vehicle stopped, petitioner left the scene purportedly to ask help from her brother, leaving the other passengers to come to the aid of her injured driver.

Damages for Loss of Earning Capacity

Next, the Court holds that the CA erred in awarding damages for loss of earning capacity in the absence of documentary evidence to support the claim.

Damages for loss of earning capacity is in the nature of actual damages,[26] which as a rule must be duly proven[27] by documentary evidence, not merely by the self-serving testimony of the widow.

By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[28]

Based solely on Nelfa's testimony, the CA determined that the deceased falls within one of these exceptions. Nelfa testified that her husband was in the business of contracting and manufacturing grills, fences and gates,[29] and his earnings "exceed P6,000.00"[30] per month prior to his death. She presented no documentary proof of her claims.

It was error for the CA to have awarded damages for loss of earning capacity based on Nelfa's testimony alone.

First, while it is conceded that the deceased was self-employed, the Court cannot accept that in his line of work there was no documentary proof available to prove his income from such occupation. There would have been

receipts, job orders, or some form of written contract or agreement between the deceased and his clients when he is contracted for a job.

Second, and more importantly, decedent was not earning “less than the minimum wage” at the time of his death.

Wage Order No. RTWPB-XI-07,[31] issued by the Regional Tripartite Wages and Productivity Board-XI of the National Wages and Productivity Commission, under the Department of Labor and Employment, took effect on 1 November 1999 and mandated the minimum wage rate in Region XI, including General Santos City, at the time of the accident. Section 1 provides:

SECTION 1. NEW MINIMUM WAGE RATES. Effective November 1, 1999, the new minimum wage rates in Region XI shall be as follows:

SECTOR/INDUSTRY

Davao City
General Santos City
Island Garden City of Samal
Tagum City

Provinces of:

Davao del Norte
Davao del Sur
Davao Oriental
Compostela Valley
South Cotabato

NON-AGRICULTURE

AGRICULTURE

- Plantation (i.e. more than 24 Hectares or employing at least 20 workers)
- Non-Plantation

RETAIL/SERVICE

- Employing more than 10 workers
- Employing not more than 10 workers

148.00

138.00

117.00

148.00

117.00

146.00

136.00

115.00

146.00

115.00

Respondent testified that her husband was earning not less than P6,000.00 per month. On the other hand, the highest minimum wage rate at the time of the accident, based on Wage Order No. RTWPB-XI-07, was P148.00. At that rate, the monthly minimum wage would be P3,256.00,[32] clearly an amount less than what respondent testified to as her husband's monthly earnings. The deceased would not fall within the recognized exceptions.

There is therefore no basis for the CA's computation for Mumar's supposed net earning capacity and the subsequent award of damages due to loss of earning capacity.

WHEREFORE, we GRANT IN PART the petition. We AFFIRM WITH MODIFICATION the Decision of the Court of Appeals dated 31 July 2009 and Resolution dated 27 July 2010 in CA-G.R. CV No. 00023-MIN. We ORDER petitioner to pay respondent the following:

- Civil indemnity of P50,000.00;
- Temperate damages of P25,000.00, in lieu of the award for burial expenses;
- Moral damages of P50,000.00; and
- Interest on the total monetary award at the rate of 12% per annum from the finality of this decision until the award is fully satisfied.

SO ORDERED.

Brion, Perez, Sereno, and Reyes, JJ., concur.

[1] Identified in some parts of the records as Paulita "Edith" Sierra or Editha Serra.

[2] Rollo, pp. 39-47. Penned by Associate Justice Edgardo T. Lloren, with Associate Justice Romulo V. Borja and Associate Justice Jane Aurora C. Lantion concurring.

[3] Id. at 48. Penned by Associate Justice Edgardo T. Lloren, with Associate Justice Romulo V. Borja and Associate Justice Ramon Paul L. Hernando, concurring.

[4] Id. at 65-70.

[5] Id. at 70.

[6] Id. at 69.

[7] Id. at 47.

[8] Id. at 46.

[9] Id. at 27.

[10] Id. at 31.

[11] Id. at 35.

[12] Id. at 36.

[13] Id. at 98.

[14] Marcelo v. Bungubung, G.R. No. 175201, 23 April 2008, 552 SCRA 589, 606 (Citations omitted); Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation, 509 Phil. 426, 431 (2005).

[15] Gold Loop Properties, Inc. v. Court of Appeals, 403 Phil. 280, 291 (2001).

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

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

[18] People v. Alba, 326 Phil. 520, 527 (1996); Digital Telecommunications Philippines, Inc. v. Soriano, 525 Phil. 765, 794 (2006) citing Daggers v. Van Dyck 37 N.J. Eq. 130, 132.

[19] TSN (Editha Serra), 31 October 2001, p. 8.

[20] Id. at 11.

[21] TSN (Haron Abdullatip), 6 August 2001, p. 52.

[22] Philippine Hawk Corporation v. Lee, G.R. No. 166869, 16 February 2010, 612 SCRA 576, 588 citing Macalinao v. Ong, 514 Phil. 127, 142-143 (2005).

[23] L.G. Foods Corporation v. Judge Pagapong-Agraviador, G.R. No. 158995, 26 September 2006, 503 SCRA 170, 179 citing Kapalaran Bus Lines v. Coronado, 257 Phil. 797, 807 (1989).

[24] Art. 2184. In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable.

[25] TSN (Editha Serra), 31 October 2001, pp. 5-6.

[26] Article 2205, Civil Code of the Philippines; People v. Cuenca, 425 Phil. 722, 743 (2002) citing People v. Panabang, 424 Phil. 596, 614 (2002).

[27] Article 2199, Civil Code of the Philippines.

[28] Victory Liner, Inc. v. Gammad, 486 Phil. 574, 590 (2004) citing People v. Oco, 458 Phil. 815, 855 (2003).

[29] TSN (Nelfa Mumar), 8 August 2001, p. 77.

[30] Id. at 78.

[31] Accessed on 1 March 2012.

[32] This figure was obtained by multiplying the highest minimum wage rate, P148, by 22, the average number of working days per month.

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