

MALAYAN INSURANCE CO., INC., PETITIONER, VS. RODELIO ALBERTO AND ENRICO ALBERTO REYES, RESPONDENTS.*G.R. No. 194320. February 01, 2012*

Ponente: VELASCO JR., J.

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Before Us is a Petition for Review on Certiorari under Rule 45, seeking to reverse and set aside the July 28, 2010 Decision[1] of the Court of Appeals (CA) and its October 29, 2010 Resolution[2] denying the motion for reconsideration filed by petitioner Malayan Insurance Co., Inc. (Malayan Insurance). The July 28, 2010 CA Decision reversed and set aside the Decision[3] dated February 2, 2009 of the Regional Trial Court, Branch 51 in Manila.

The Facts

At around 5 o'clock in the morning of December 17, 1995, an accident occurred at the corner of EDSA and Ayala Avenue, Makati City, involving four (4) vehicles, to wit: (1) a Nissan Bus operated by Aladdin Transit with plate number NYS 381; (2) an Isuzu Tanker with plate number PLR 684; (3) a Fuzo Cargo Truck with plate number PDL 297; and (4) a Mitsubishi Galant with plate number TLM 732.[4]

Based on the Police Report issued by the on-the-spot investigator, Senior Police Officer 1 Alfredo M. Dungga (SPO1 Dungga), the Isuzu Tanker was in front of the Mitsubishi Galant with the Nissan Bus on their right side shortly before the vehicular incident. All three (3) vehicles were at a halt along EDSA facing the south direction when the Fuzo Cargo Truck simultaneously bumped the rear portion of the Mitsubishi Galant and the rear left portion of the Nissan Bus. Due to the strong impact, these two vehicles were shoved forward and the front left portion of the Mitsubishi Galant rammed into the rear right portion of the Isuzu Tanker.[5]

Previously, particularly on December 15, 1994, Malayan Insurance issued Car Insurance Policy No. PV-025-00220 in favor of First Malayan Leasing and Finance Corporation (the assured), insuring the aforementioned Mitsubishi Galant against third party liability, own damage and theft, among others. Having insured the vehicle against such risks, Malayan Insurance claimed in its Complaint dated October 18, 1999 that it paid the damages sustained by the assured amounting to PhP 700,000.[6]

Maintaining that it has been subrogated to the rights and interests of the assured by operation of law upon its payment to the latter, Malayan Insurance sent several demand letters to respondents Rodelio Alberto (Alberto) and Enrico Alberto Reyes (Reyes), the registered owner and the driver, respectively, of the Fuzo Cargo Truck, requiring them to pay the amount it had paid to the assured. When respondents refused to settle their liability, Malayan Insurance was constrained to file a complaint for damages for gross negligence against respondents.[7]

In their Answer, respondents asserted that they cannot be held liable for the vehicular accident, since its proximate cause was the reckless driving of the Nissan Bus driver. They alleged that the speeding bus, coming from the

service road of EDSA, maneuvered its way towards the middle lane without due regard to Reyes' right of way. When the Nissan Bus abruptly stopped, Reyes stepped hard on the brakes but the braking action could not cope with the inertia and failed to gain sufficient traction. As a consequence, the Fuzo Cargo Truck hit the rear end of the Mitsubishi Galant, which, in turn, hit the rear end of the vehicle in front of it. The Nissan Bus, on the other hand, sideswiped the Fuzo Cargo Truck, causing damage to the latter in the amount of PhP 20,000. Respondents also controverted the results of the Police Report, asserting that it was based solely on the biased narration of the Nissan Bus driver.[8]

After the termination of the pre-trial proceedings, trial ensued. Malayan Insurance presented the testimony of its lone witness, a motor car claim adjuster, who attested that he processed the insurance claim of the assured and verified the documents submitted to him. Respondents, on the other hand, failed to present any evidence.

In its Decision dated February 2, 2009, the trial court, in Civil Case No. 99-95885, ruled in favor of Malayan Insurance and declared respondents liable for damages. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff against defendants jointly and severally to pay plaintiff the following:

- The amount of P700,000.00 with legal interest from the time of the filing of the complaint;
- Attorney's fees of P10,000.00 and;
- Cost of suit.

SO ORDERED.[9]

Dissatisfied, respondents filed an appeal with the CA, docketed as CA-G.R. CV No. 93112. In its Decision dated July 28, 2010, the CA reversed and set aside the Decision of the trial court and ruled in favor of respondents, disposing:

WHEREFORE, the foregoing considered, the instant appeal is hereby GRANTED and the assailed Decision dated 2 February 2009 REVERSED and SET ASIDE. The Complaint dated 18 October 1999 is hereby DISMISSED for lack of merit. No costs.

SO ORDERED.[10]

The CA held that the evidence on record has failed to establish not only negligence on the part of respondents, but also compliance with the other requisites and the consequent right of Malayan Insurance to subrogation.[11] It noted that the police report, which has been made part of the records of the trial court, was not properly identified by the police officer who conducted the on-the-spot investigation of the subject collision. It, thus, held that an appellate court, as a reviewing body, cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document, much less accord it evidentiary value.[12]

Subsequently, Malayan Insurance filed its Motion for Reconsideration, arguing that a police report is a prima facie evidence of the facts stated in it. And inasmuch as they never questioned the presentation of the report in evidence, respondents are deemed to have waived their right to question its authenticity and due execution.[13]

In its Resolution dated October 29, 2010, the CA denied the motion for reconsideration. Hence, Malayan Insurance filed the instant petition.

The Issues

In its Memorandum[14] dated June 27, 2011, Malayan Insurance raises the following issues for Our

consideration:

I

WHETHER THE CA ERRED IN REFUSING ADMISSIBILITY OF THE POLICE REPORT SINCE THE POLICE INVESTIGATOR WHO PREPARED THE SAME DID NOT ACTUALLY TESTIFY IN COURT THEREON.

II

WHETHER THE SUBROGATION OF MALAYAN INSURANCE IS IMPAIRED AND/OR DEFICIENT.

On the other hand, respondents submit the following issues in its Memorandum[15] dated July 7, 2011:

I

WHETHER THE CA IS CORRECT IN DISMISSING THE COMPLAINT FOR FAILURE OF MALAYAN INSURANCE TO OVERCOME THE BURDEN OF PROOF REQUIRED TO ESTABLISH THE NEGLIGENCE OF RESPONDENTS.

II

WHETHER THE PIECES OF EVIDENCE PRESENTED BY MALAYAN INSURANCE ARE SUFFICIENT TO CLAIM FOR THE AMOUNT OF DAMAGES.

III

WHETHER THE SUBROGATION OF MALAYAN INSURANCE HAS PASSED COMPLIANCE AND REQUISITES AS PROVIDED UNDER PERTINENT LAWS.

Essentially, the issues boil down to the following: (1) the admissibility of the police report; (2) the sufficiency of the evidence to support a claim for gross negligence; and (3) the validity of subrogation in the instant case.

Our Ruling

The petition has merit.

Admissibility of the Police Report

Malayan Insurance contends that, even without the presentation of the police investigator who prepared the police report, said report is still admissible in evidence, especially since respondents failed to make a timely objection to its presentation in evidence.[16] Respondents counter that since the police report was never confirmed by the investigating police officer, it cannot be considered as part of the evidence on record.[17]

Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal knowledge, that is, which are derived from the witness' own perception.[18] Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters.[19] Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule.[20]

As discussed in *D.M. Consunji, Inc. v. CA*,[21] "Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements."

There are several exceptions to the hearsay rule under the Rules of Court, among which are entries in official records.[22] Section 44, Rule 130 provides:

Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a

person in the performance of a duty specially enjoined by law are prima facie evidence of the facts therein stated.

In *Alvarez v. PICOP Resources*,^[23] this Court reiterated the requisites for the admissibility in evidence, as an exception to the hearsay rule of entries in official records, thus: (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his or her duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him or her stated, which must have been acquired by the public officer or other person personally or through official information.

Notably, the presentation of the police report itself is admissible as an exception to the hearsay rule even if the police investigator who prepared it was not presented in court, as long as the above requisites could be adequately proved.^[24]

Here, there is no dispute that SPO1 Dungga, the on-the-spot investigator, prepared the report, and he did so in the performance of his duty. However, what is not clear is whether SPO1 Dungga had sufficient personal knowledge of the facts contained in his report. Thus, the third requisite is lacking.

Respondents failed to make a timely objection to the police report's presentation in evidence; thus, they are deemed to have waived their right to do so.^[25] As a result, the police report is still admissible in evidence.

Sufficiency of Evidence

Malayan Insurance contends that since Reyes, the driver of the Fuzo Cargo truck, bumped the rear of the Mitsubishi Galant, he is presumed to be negligent unless proved otherwise. It further contends that respondents failed to present any evidence to overturn the presumption of negligence.^[26] Contrarily, respondents claim that since Malayan Insurance did not present any witness who shall affirm any negligent act of Reyes in driving the Fuzo Cargo truck before and after the incident, there is no evidence which would show negligence on the part of respondents.^[27]

We agree with Malayan Insurance. Even if We consider the inadmissibility of the police report in evidence, still, respondents cannot evade liability by virtue of the *res ipsa loquitur* doctrine. The *D.M. Consunji, Inc.* case is quite elucidating:

Petitioner's contention, however, loses relevance in the face of the application of *res ipsa loquitur* by the CA. The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that prima facie negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.

The concept of *res ipsa loquitur* has been explained in this wise:

While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there

is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.

One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.

The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.

It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The *res ipsa loquitur* doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some courts add to the three prerequisites for the application of the *res ipsa loquitur* doctrine the further requirement that for the *res ipsa loquitur* doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.

The CA held that all the requisites of *res ipsa loquitur* are present in the case at bar:

There is no dispute that appellee's husband fell down from the 14th floor of a building to the basement while he was working with appellant's construction project, resulting to his death. The construction site is within the exclusive control and management of appellant. It has a safety engineer, a project superintendent, a carpenter leadman and others who are in complete control of the situation therein. The circumstances of any accident that would occur therein are peculiarly within the knowledge of the appellant or its employees. On the other hand, the appellee is not in a position to know what caused the accident. *Res ipsa loquitur* is a rule of necessity and it applies where evidence is absent or not readily available, provided the following requisites are present: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. x x x.

No worker is going to fall from the 14th floor of a building to the basement while performing work in a construction site unless someone is negligent[;] thus, the first requisite for the application of the rule of *res ipsa loquitur* is present. As explained earlier, the construction site with all its paraphernalia and human resources that likely caused the injury is under the exclusive control and management of appellant[;] thus[,] the second requisite is also present. No contributory negligence was attributed to the appellee's deceased husband[;] thus[,] the last requisite is also present. All the requisites for the application of the rule of *res ipsa loquitur* are present, thus a reasonable presumption or inference of appellant's negligence arises. x x x.

Petitioner does not dispute the existence of the requisites for the application of *res ipsa loquitur*, but argues that the presumption or inference that it was negligent did not arise since it "proved that it exercised due care to avoid the accident which befell respondent's husband."

Petitioner apparently misapprehends the procedural effect of the doctrine. As stated earlier, the defendant's negligence is presumed or inferred when the plaintiff establishes the requisites for the application of *res ipsa loquitur*. Once the plaintiff makes out a *prima facie* case of all the elements, the burden then shifts to defendant to

explain. The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances a disputable presumption, such as that of due care or innocence, may outweigh the inference. It is not for the defendant to explain or prove its defense to prevent the presumption or inference from arising. Evidence by the defendant of say, due care, comes into play only after the circumstances for the application of the doctrine has been established.[28]

In the case at bar, aside from the statement in the police report, none of the parties disputes the fact that the Fuzo Cargo Truck hit the rear end of the Mitsubishi Galant, which, in turn, hit the rear end of the vehicle in front of it. Respondents, however, point to the reckless driving of the Nissan Bus driver as the proximate cause of the collision, which allegation is totally unsupported by any evidence on record. And assuming that this allegation is, indeed, true, it is astonishing that respondents never even bothered to file a cross-claim against the owner or driver of the Nissan Bus.

What is at once evident from the instant case, however, is the presence of all the requisites for the application of the rule of *res ipsa loquitur*. To reiterate, *res ipsa loquitur* is a rule of necessity which applies where evidence is absent or not readily available. As explained in *D.M. Consunji, Inc.*, it is partly based upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and, therefore, is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence.

As mentioned above, the requisites for the application of the *res ipsa loquitur* rule are the following: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.[29]

In the instant case, the Fuzo Cargo Truck would not have had hit the rear end of the Mitsubishi Galant unless someone is negligent. Also, the Fuzo Cargo Truck was under the exclusive control of its driver, Reyes. Even if respondents avert liability by putting the blame on the Nissan Bus driver, still, this allegation was self-serving and totally unfounded. Finally, no contributory negligence was attributed to the driver of the Mitsubishi Galant. Consequently, all the requisites for the application of the doctrine of *res ipsa loquitur* are present, thereby creating a reasonable presumption of negligence on the part of respondents.

It is worth mentioning that just like any other disputable presumptions or inferences, the presumption of negligence may be rebutted or overcome by other evidence to the contrary. It is unfortunate, however, that respondents failed to present any evidence before the trial court. Thus, the presumption of negligence remains. Consequently, the CA erred in dismissing the complaint for Malayan Insurance's adverted failure to prove negligence on the part of respondents.

Validity of Subrogation

Malayan Insurance contends that there was a valid subrogation in the instant case, as evidenced by the claim check voucher[30] and the Release of Claim and Subrogation Receipt[31] presented by it before the trial court. Respondents, however, claim that the documents presented by Malayan Insurance do not indicate certain important details that would show proper subrogation.

As noted by Malayan Insurance, respondents had all the opportunity, but failed to object to the presentation of its evidence. Thus, and as We have mentioned earlier, respondents are deemed to have waived their right to make an

objection. As this Court held in *Asian Construction and Development Corporation v. COMFAC Corporation*:

The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. We note that ASIAKONSTRUCT's counsel of record before the trial court, Atty. Bernard Dy, who actively participated in the initial stages of the case stopped attending the hearings when COMFAC was about to end its presentation. Thus, ASIAKONSTRUCT could not object to COMFAC's offer of evidence nor present evidence in its defense; ASIAKONSTRUCT was deemed by the trial court to have waived its chance to do so.

Note also that when a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[32] (Emphasis supplied.)

Bearing in mind that the claim check voucher and the Release of Claim and Subrogation Receipt presented by Malayan Insurance are already part of the evidence on record, and since it is not disputed that the insurance company, indeed, paid PhP 700,000 to the assured, then there is a valid subrogation in the case at bar. As explained in *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*:

Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment.

We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[33]

Considering the above ruling, it is only but proper that Malayan Insurance be subrogated to the rights of the assured.

WHEREFORE, the petition is hereby GRANTED. The CA's July 28, 2010 Decision and October 29, 2010 Resolution in CA-G.R. CV No. 93112 are hereby REVERSED and SET ASIDE. The Decision dated February 2, 2009 issued by the trial court in Civil Case No. 99-95885 is hereby REINSTATED.

No pronouncement as to cost.

SO ORDERED.

Peralta, Mendoza, Reyes,[*] and Perlas-Bernabe, JJ., concur.

[*] Additional member per Special Order No. 1178 dated January 26, 2012.

[1] Rollo, pp. 16-26. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante.

[2] Id. at 29-30.

[3] Id. at 64-70. Penned by Presiding Judge Gregorio B. Clemeña, Jr.

[4] Id. at 17.

[5] Id. at 17-18

[6] Id.

[7] Id. at 18.

[8] Id. at 18-19.

[9] Id. at 69-70.

[10] Id. at 25.

[11] Id. at 22.

[12] Id. at 24.

[13] Id. at 88.

[14] Id. at 99-107.

[15] Id. at 110-115.

[16] Id. at 101.

[17] Id. at 113.

[18] Rules of Court, Rule 130, Sec. 36.

[19] D.M. Consunji, Inc. v. CA, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 253-254.

[20] Id. at 254.

[21] Id.

[22] Id.

[23] G.R. Nos. 162243, 164516 & 171875, December 3, 2009, 606 SCRA 444, 525; citing *Africa v. Caltex*, 123 Phil. 272, 277 (1966).

[24] Id. at 525-526.

[25] *Asian Construction and Development Corporation v. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 504 SCRA 519, 524.

[26] Rollo, p. 105.

[27] Id. at 113.

[28] *Supra* note 19, at 257-260; citations omitted.

[29] Id. at 259.

[30] Rollo, p. 106, Exhibit "D."

[31] Id., Exhibit "E."

[32] Supra note 25.

[33] G.R. Nos. 180880-81 & 180896-97, September 25, 2009, 601 SCRA 96, 141-142.

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