

**F.F. CRUZ AND CO., INC., PETITIONER, VS. THE COURT OF APPEALS,
GREGORIO MABLE AS SUBSTITUTED BY HIS WIFE LUZ ALMONTE
MABLE AND CHILDREN DOMING, LEONIDAS, LIGAYA, ELENA,
GREGORIO...**

G.R. No. 52732. August 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

This petition to review the decision of the Court of Appeals puts in issue the application of the common law doctrine of *res ipsa loquitur*.

The essential facts of the case are not disputed.

The furniture manufacturing shop of petitioner in Caloocan City was situated adjacent to the residence of private respondents. Sometime in August 1971, private respondent Gregorio Mable first approached Eric Cruz, petitioner's plant manager, to request that a firewall be constructed between the shop and private respondents' residence. The request was repeated several times but they fell on deaf ears. In the early morning of September 6, 1974, fire broke out in petitioner's shop. Petitioner's employees, who slept in the shop premises, tried to put out the fire, but their efforts proved futile. The fire spread to private respondents' house. Both the shop and the house were razed to the ground. The cause of the conflagration was never discovered. The National Bureau of Investigation found specimens from the burned structures negative for the presence of inflammable substances.

Subsequently, private respondents collected P35,000.00 on the insurance on their house and the contents thereof.

On January 23, 1975, private respondents filed an action for damages against petitioner, praying for a judgment in their favor awarding P150,000.00 as actual damages, P50,000.00 as moral damages, P25,000.00 as exemplary damages, P20,000.00 as attorney's fees and costs. The Court of First Instance held for private respondents:

WHEREFORE, the Court hereby renders judgment, in favor of plaintiffs, and against the defendant:

- Ordering the defendant to pay to the plaintiffs the amount of P80,000.00 for damages suffered by said plaintiffs for the loss of their house, with interest of 6% from the date of the filing of the Complaint on January 23, 1975, until fully paid;
- Ordering the defendant to pay to the plaintiffs the sum of P50,000.00 for the loss of plaintiffs' furnitures, religious images, silverwares, chinawares, jewelries, books, kitchen utensils, clothing and other valuables, with interest of 6% from date of the filing of the Complaint on January 23, 1975, until fully paid;
- Ordering the defendant to pay to the plaintiffs the sum of P5,000.00 as moral damages, P2,000.00 as exemplary damages, and P5,000.00 as and by way of attorney's fees;
- With costs against the defendant;

- Counterclaim is ordered dismissed, for lack of merit. [CA Decision, pp. 1-2; Rollo, pp. 29-30.]

On appeal, the Court of Appeals, in a decision promulgated on November 19, 1979, affirmed the decision of the trial court but reduced the award of damages:

WHEREFORE, the decision declaring the defendants liable is affirmed. The damages to be awarded to plaintiff should be reduced to P70,000.00 for the house and P50,000.00 for the furniture and other fixtures with legal interest from the date of the filing of the complaint until full payment thereof. [CA Decision, p. 7; Rollo, p. 35.]

A motion for reconsideration was filed on December 3, 1979 but was denied in a resolution dated February 18, 1980. Hence, petitioner filed the instant petition for review on February 22, 1980.

After the comment and reply were filed, the Court resolved to deny the petition for lack of merit on June 11, 1980. However, petitioner filed a motion for reconsideration, which was granted, and the petition was given due course on September 12, 1980. After the parties filed their memoranda, the case was submitted for decision on January 21, 1981.

Petitioner contends that the Court of Appeals erred:

- In not deducting the sum of P35,000.00, which private respondents recovered on the insurance on their house, from the award of damages.
- In awarding excessive and/or unproved damages.
- In applying the doctrine of res ipsa loquitur to the facts of the instant case.

The pivotal issue in this case is the applicability of the common law doctrine of res ipsa loquitur, the issue of damages being merely consequential. In view thereof, the errors assigned by petitioner shall be discussed in the reverse order.

1. The doctrine of res ipsa loquitur, whose application to the instant case petitioner objects to, may be stated as follows:

Where the thing which caused the injury complained of is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have its management or control use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. [Africa v. Caltex (Phil.), Inc., G.R. No. L-12986, March 31, 1966, 16 SCRA 448.]

Thus, in Africa, supra, where fire broke out in a Caltex service station while gasoline from a tank truck was being unloaded into an underground storage tank through a hose and the fire spread to and burned neighboring houses, this Court, applying the doctrine of res ipsa loquitur, adjudged Caltex liable for the loss.

The facts of the case likewise call for the application of the doctrine, considering that in the normal course of operations of a furniture manufacturing shop, combustible material such as wood chips, sawdust, paint, varnish and fuel and lubricants for machinery may be found thereon.

It must also be noted that negligence or want of care on the part of petitioner or its employees was not merely presumed. The Court of Appeals found that petitioner failed to construct a firewall between its shop and the residence of private respondents as required by a city ordinance; that the fire could have been caused by a heated motor or a lit cigarette; that gasoline and alcohol were used and stored in the shop; and that workers sometimes smoked inside the shop [CA Decision, p. 5; Rollo, p. 33.]

Even without applying the doctrine of res ipsa loquitur, petitioner's failure to construct a firewall in accordance

with city ordinances would suffice to support a finding of negligence.

Even then the fire possibly would not have spread to the neighboring houses were it not for another negligent omission on the part of defendants, namely, their failure to provide a concrete wall high enough to prevent the flames from leaping over it. As it was the concrete wall was only 2-1/2 meters high, and beyond that height it consisted merely of galvanized iron sheets, which would predictably crumble and melt when subjected to intense heat. Defendant's negligence, therefore, was not only with respect to the cause of the fire but also with respect to the spread thereof to the neighboring houses. [*Africa v. Caltex (Phil.), Inc.*, supra; Italics supplied.]

In the instant case, with more reason should petitioner be found guilty of negligence since it had failed to construct a firewall between its property and private respondents' residence which sufficiently complies with the pertinent city ordinances. The failure to comply with an ordinance providing for safety regulations had been ruled by the Court as an act of negligence [*Teague v. Fernandez*, G.R. No. L-29745, June 4, 1973, 51 SCRA 181.]

The Court of Appeals, therefore, had more than adequate basis to find petitioner liable for the loss sustained by private respondents.

- Since the amount of the loss sustained by private respondents constitutes a finding of fact, such finding by the Court of Appeals should not be disturbed by this Court [*M.D. Transit & Taxi Co., Inc. v. Court of Appeals*, G.R. No. L-23882, February 17, 1968, 22 SCRA 559], more so when there is no showing of arbitrariness.

In the instant case, both the CFI and the Court of Appeals were in agreement as to the value of private respondents' furniture and fixtures and personal effects lost in the fire (i.e. P50,000.00). With regard to the house, the Court of Appeals reduced the award to P70,000.00 from P80,000.00. Such cannot be categorized as arbitrary considering that the evidence shows that the house was built in 1951 for P40,000.00 and, according to private respondents, its reconstruction would cost P246,000.00. Considering the appreciation in value of real estate and the diminution of the real value of the peso, the valuation of the house at P70,000.00 at the time it was razed cannot be said to be excessive.

- While this Court finds that petitioner is liable for damages to private respondents as found by the Court of Appeals, the fact that private respondents have been indemnified by their insurer in the amount of P35,000.00 for the damage caused to their house and its contents has not escaped the attention of the Court. Hence, the Court holds that in accordance with Article 2207 of the Civil Code the amount of P35,000.00 should be deducted from the amount awarded as damages. Said article provides:

Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company is subrogated to the rights of the insured against the wrongdoer or the person who violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. [Italics supplied.]

The law is clear and needs no interpretation. Having been indemnified by their insurer, private respondents are only entitled to recover the deficiency from petitioner.

On the other hand, the insurer, if it is so minded, may seek reimbursement of the amount it indemnified private respondents from petitioner. This is the essence of its right to be subrogated to the rights of the insured, as expressly provided in Article 2207. Upon payment of the loss incurred by the insured, the insurer is entitled to be subrogated pro tanto to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss [*Fireman's Fund Insurance Co. v. Jamila & Co., Inc.*, G.R. No. L-27427, April 7, 1976, 70 SCRA 323.]

Under Article 2207, the real party in interest with regard to the indemnity received by the insured is the insurer [Phil. Air Lines, Inc. v. Heald Lumber Co., 101 Phil. 1031, (1957).] Whether or not the insurer should exercise the rights of the insured to which it had been subrogated lies solely within the former's sound discretion. Since the insurer is not a party to the case, its identity is not of record and no claim is made on its behalf, the private respondent's insurer has to claim his right to reimbursement of the P35,000.00 paid to the insured.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals is hereby AFFIRMED with the following modifications as to the damages awarded for the loss of private respondents' house, considering their receipt of P35,000.00 from their insurer: (1) the damages awarded for the loss of the house is reduced to P35,000.00; and (2) the right of the insurer to subrogation and thus seek reimbursement from petitioner for the P35,000.00 it had paid private respondents is recognized.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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