SPOUSES JOSE FONTANILLA AND VIRGINIA FONTANILLA, PETITIONERS, VS. HONORABLE INOCENCIO D. MALIAMAN AND NATIONAL IRRIGATION ADMI-NISTRATION, RESPONDENTS.

G.R. No. 55963. December 01, 1989

Ponente: PARAS, J.

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PARAS, J.:

In G.R. No. 55963, the petition for review on certiorari seeks the affirmance of the decision dated March 20, 1980 of the then Court of First Instance of Nueva Ecija, Branch VIII, at San Jose City, and its modification with respect to the denial of petitioner's claim for moral and exemplary damages and attorney's fees.

In G.R. No. 61045, respondent National Irrigation Administration seeks the reversal of the aforesaid decision of the lower court. The original appeal of this case before the Court of Appeals was certified to this Court and in the resolution of July 7, 1982, it was docketed with the aforecited number. And in the resolution of April 3, 1989, this case was consolidated with G.R. No. 55963.

It appears that on August 21, 1976 at about 6:30 P.M., a pick-up owned and operated by respondent National Irrigation Administration, a government agency bearing Plate No. IN-651, then driven officially by Hugo Garcia, an employee of said agency as its regular driver, bumped a bicycle ridden by Francisco Fontanilla, son of herein petitioners, and Restituto Deligo at Maasin, San Jose City along the Maharlika Highway. As a result of the impact, Francisco Fontanilla and Restituto Deligo were injured and brought to the San Jose City Emergency Hospital for treatment. Fontanilla was later transferred to the Cabanatuan Provincial Hospital where he died.

Garcia was then a regular driver of respondent National Irrigation Administration who, at the time of the accident, was a licensed professional driver and who qualified for employment as such regular driver of respondent after having passed the written and oral examinations on traffic rules and maintenance of vehicles given by National Irrigation Administration authorities.

The within petition is thus an offshoot of the action (Civil Case No. SJC-56) instituted by petitioners-spouses on April 17, 1978 against respondent NIA before the then Court of First Instance of Nueva Ecija, Branch VIII at San Jose City, for damages in connection with the death of their son resulting from the aforestated accident.

After trial, the trial court rendered judgment on March 20, 1980 which directed respondent National Irrigation Administration to pay damages (death benefits) and actual expenses to petitioners. The dispositive portion of the decision reads thus:

"x x x x x Judgment is hereby rendered ordering the defendant National Irrigation Administration to pay to the heirs of the deceased P12,000.00 for the death of Francisco Fontanilla: P3,389.00 which the parents of the deceased had spent for the hospitalization and burial of the deceased Francisco Fontanilla; and to pay the costs." (Brief for the petitioners spouses Fontanilla, p. 4; Rollo, p. 132)

Respondent National Irrigation Administration filed on April 21, 1980, its motion for reconsideration of the

aforesaid decision which respondent trial court denied in its Order of June 13, 1980. Respondent National Irrigation Administration thus appealed said decision to the Court of Appeals (C.A.-G.R. NO. 67237-R) where it filed its brief for appellant in support of its position.

Instead of filing the required brief in the aforecited Court of Appeals case, petitioners filed the instant petition with this Court.

The sole issue for the resolution of the Court is: Whether or not the award of moral damages, exemplary damages and attorney's fees is legally proper in a complaint for damages based on quasi-delict which resulted in the death of the son of herein petitioners.

Petitioners allege:

1. The award of moral damages specifically allowable under paragraph 3 of Article 2206 of the New Civil Code which provides that the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. Should moral damages be granted, the award should be made to each of petitioners-spouses individually and in varying amounts depending upon proof of mental and depth of intensity of the same, which should not be less than P50,000.00 for each of them.

2. The decision of the trial court had made an impression that respondent National Irrigation Administration acted with gross negligence because of the accident and the subsequent failure of the National Irrigation Administration personnel including the driver to stop in order to give assistance to the victims. Thus, by reason of the gross negligence of respondent, petitioners become entitled to exemplary damages under Arts. 2231 and 2229 of the New Civil Code.

3. Petitioners are entitled to an award of attorney's fees, the amount of which (20%) had been sufficiently established in the hearing of May 23, 1979.

4. This petition has been filed only for the purpose of reviewing the findings of the lower court upon which the disallowance of moral damages, exemplary damages and attorney's fees was based and not for the purpose of disturbing the other findings of fact and conclusions of law.

The Solicitor General, taking up the cudgels for public respondent National Irrigation Administration, contends thus:

1. The filing of the instant petition is not proper in view of the appeal taken by respondent National Irrigation Administration to the Court of Appeals against the judgment sought to be reviewed. The focal issue raised in respondent's appeal to the Court of Appeals involves the question as to whether or not the driver of the vehicle that bumped the victims was negligent in his operation of said vehicle. It thus becomes necessary that before petitioners' claim for moral and exemplary damages could be resolved, there should first be a finding of negligence on the part of respondent's employee-driver. In this regard, the Solicitor General alleges that the trial court decision does not categorically contain such finding.

2. The filing of the "Appearance and Urgent Motion For Leave to File Plaintiff-Appellee's Brief" dated December 28, 1981 by petitioners in the appeal (CA-G.R. NO. 67237-R; and G.R. NO. 61045) of the respondent National Irrigation Administration before the Court of Appeals, is an explicit admission of said petitioners that the herein petition is not proper. Inconsistent procedures are manifest because while petitioners question the findings of fact in the Court of Appeals, they present only questions of law before this Court which posture confirms their admission of the facts.

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3. The fact that the parties failed to agree on whether or not negligence caused the vehicular accident involves a question of fact which petitioners should have brought to the Court of Appeals within the reglementary period. Hence, the decision of the trial court has become final as to the petitioners and for this reason alone, the petition should be dismissed.

4. Respondent Judge acted within his jurisdiction, sound discretion and in conformity with the law.

5. Respondents do not assail petitioners' claim to moral and exemplary damages by reason of the shock and subsequent illness they suffered because of the death of their son. Respondent National Irrigation Administration, however, avers that it cannot be held liable for the damages because it is an agency of the State performing governmental functions and driver Hugo Garcia was a regular driver of the vehicle, not a special agent who was performing a job or act foreign to his usual duties. Hence, the liability for the tortious act should not be borne by respondent government agency but by driver Garcia who should answer for the consequences of his act.

6. Even as the trial court touched on the failure or laxity of respondent National Irrigation Administration in exercising due diligence in the selection and supervision of its employee, the matter of due diligence is not an issue in this case since driver Garcia was not its special agent but a regular driver of the vehicle.

The sole legal question on whether or not petitioners may be entitled to an award of moral and exemplary damages and attorney's fees can very well be answered with the application of Arts. 2176 and 2180 of the New Civil Code.

Art. 2176 thus provides:

"Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

Paragraphs 5 and 6 of Art. 2180 read as follows:

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

"The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Art. 2176 shall be applicable."

The liability of the State has two aspects, namely:

1. Its public or governmental aspects where it is liable for the tortious acts of special agents only.

2. Its private or business aspects (as when it engages in private enterprises) where it becomes liable as an ordinary employer. (p. 961, Civil Code of the Philippines; Annotated. Paras; 1986 Ed.)

In this jurisdiction, the State assumes a limited liability for the damage caused by the tortious acts or conduct of its special agent.

Under the aforequoted paragraph 6 of Art. 2180, the State has voluntarily assumed liability for acts done through special agents. The State's agent, if a public official, must not only be specially commissioned to do a particular task but that such task must be foreign to said official's usual governmental functions. If the State's agent is not a public official, and is commissioned to perform non-governmental functions, then the State assumes the role of an ordinary employer and will be held liable as such for its agent's tort. Where the government commissions a private individual for a special governmental task, it is acting through a special agent within the meaning of the provision.

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(Torts and Damages, Sangco, p. 347, 1984 Ed.)

Certain functions and activities, which can be performed only by the government, are more or less generally agreed to be "governmental" in character, and so the State is immune from tort liability. On the other hand, a service which might as well be provided by a private corporation, and particularly when it collects revenues from it, the function is considered a "proprietary" one, as to which there may be liability for the torts of agents within the scope of their employment.

The National Irrigation Administration is an agency of the government exercising proprietary functions, by express provision of Rep. Act No. 3601. Section 1 of said Act provides:

"Section 1. Name and domicile. - A body corporate is hereby created which shall be known as the National Irrigation Administration, hereinafter called the NIA for short, which shall be organized immediately after the approval of this Act. It shall have its principal seat of business in the City of Manila and shall have representatives in all provinces for the proper conduct of its business.'

Section 2 of said law spells out some of the NIA's proprietary functions. Thus -

"Sec. 2. Powers and objectives. - The NIA shall have the following powers and objectives:

"(a) x x x x x x x x x x x x x x x x x x

"(b) x x x x x x x x x x x x x x x x x x

"(c) To collect from the users of each irrigation system constructed by it such fees as may be necessary to finance the continuous operation of the system and reimburse within a certain period not less than twenty-five years cost of construction thereof; and

"(d) To do all such other things and to transact all such business as are directly or indirectly necessary, incidental or conducive to the attainment of the above objectives."

Indubitably, the NIA is a government corporation with juridical personality and not a mere agency of the government. Since it is a corporate body performing non-governmental functions, it now becomes liable for the damage caused by the accident resulting from the tortious act of its driver-employee. In this particular case, the NIA assumes the responsibility of an ordinary employer and as such, it becomes answerable for damages.

This assumption of liability, however, is predicated upon the existence of negligence on the part of respondent NIA. The negligence referred to here is the negligence of supervision.

At this juncture, the matter of due diligence on the part of respondent NIA becomes a crucial issue in determining its liability since it has been established that respondent is a government agency performing proprietary functions and as such, it assumes the posture of an ordinary employer which, under Par. 5 of Art. 2180, is responsible for the damages caused by its employees provided that it has failed to observe or exercise due diligence in the selection and supervision of the driver.

It will be noted from the assailed decision of the trial court that "as a result of the impact, Francisco Fontanilla was thrown to a distance 50 meters away from the point of impact while Restituto Deligo was thrown a little bit further away. The impact took place almost at the edge of the cemented portion of the road." (Underlining supplied) [page 26, Rollo]

The lower court further declared that "a speeding vehicle coming in contact with a person causes force and impact upon the vehicle that anyone in the vehicle cannot fail to notice. As a matter of fact, the impact was so strong as shown by the fact that the vehicle suffered dents on the right side of the radiator guard, the hood, the fender and a

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crack on the radiator as shown by the investigation report (Exhibit "E"). (Underscoring supplied) [page 29, Rollo]

It should be emphasized that the accident happened along the Marikina National Road within the city limits of San Jose City, an urban area. Considering the fact that the victim was thrown 50 meters away from the point of impact, there is a strong indication that driver Garcia was driving at a high speed. This is confirmed by the fact that the pick-up suffered substantial and heavy damage as above-described and the fact that the NIA group was then "in a hurry to reach the campsite as early as possible", as shown by their not stopping to find out what they bumped as would have been their normal and initial reaction.

Evidently, there was negligence in the supervision of the driver for the reason that they were travelling at a high speed within the city limits and yet the supervisor of the group, Ely Salonga, failed to caution and make the driver observe the proper and allowed speed limit within the city. Under the situation, such negligence is further aggravated by their desire to reach their destination without even checking whether or not the vehicle suffered damage from the object it bumped, thus showing imprudence and recklessness on the part of both the driver and the supervisor in the group.

Significantly, this Court has ruled that even if the employer can prove the diligence in the selection and supervision (the latter aspect has not been established herein) of the employee, still if he ratifies the wrongful acts, or take no step to avert further damage, the employer would still be liable. (Maxion vs. Manila Railroad Co., 44 Phil. 597).

Thus, too, in the case of Vda. de Bonifacio vs. B.L.T. Bus Co. (L-26810, August 31, 1970, 34 SCRA 618), this Court held that a driver should be especially watchful in anticipation of others who may be using the highway, and his failure to keep a proper look out for reasons and objects in the line to be traversed constitutes negligence.

Considering the foregoing, respondent NIA is hereby directed to pay herein petitioners-spouses the amounts of P12,000.00 for the death of Francisco Fontanilla; P3,389.00 for hospitalization and burial expenses of the aforenamed deceased; P30,000.00 as moral damages; P8,000.00 as exemplary damages and attorney's fees of 20% of the total award.

SO ORDERED.

Padilla, (Acting Chairman), Sarmiento, and Regalado, JJ., concur.
Melencio-Herrera, J., (Chairman), on leave.

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