

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC., PETITIONER, VS. COURT OF APPEALS AND SPOUSES ANTONIO ESTEBAN AND GLORIA ESTEBAN, RESPONDENTS.

G.R. No. 57079. September 29, 1989

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-57079/>

REGALADO, J.:

This case had its inception in an action for damages instituted in the former Court of First Instance of Negros Occidental[1] by private respondent spouses against petitioner Philippine Long Distance Telephone Company (PLDT, for brevity) for the injuries they sustained in the evening of July 30, 1968 when their jeep ran over a mound of earth and fell into an open trench, an excavation allegedly undertaken by PLDT for the installation of its underground conduit system. The complaint alleged that respondent Antonio Esteban failed to notice the open trench which was left uncovered because of the creeping darkness and the lack of any warning light or signs. As a result of the accident, respondent Gloria Esteban allegedly sustained injuries on her arms, legs and face, leaving a permanent scar on her cheek, while the respondent husband suffered cut lips. In addition, the windshield of the jeep was shattered.[2]

PLDT, in its answer, denies liability on the contention that the injuries sustained by respondent spouses were the result of their own negligence and that the entity which should be held responsible, if at all, is L.R. Barte and Company (Barte, for short), an independent contractor which undertook the construction of the manhole and the conduit system.[3] Accordingly, PLDT filed a third-party complaint against Barte alleging that, under the terms of their agreement, PLDT should in no manner be answerable for any accident or injuries arising from the negligence or carelessness of Barte or any of its employees.[4] In answer thereto, Barte claimed that it was not aware nor was it notified of the accident involving respondent spouses and that it had complied with the terms of its contract with PLDT by installing the necessary and appropriate standard signs in the vicinity of the work site, with barricades at both ends of the excavation and with red lights at night along the excavated area to warn the traveling public of the presence of excavations.[5]

On October 1, 1974, the trial court rendered a decision in favor of private respondents, the decretal part of which reads:

"IN VIEW OF THE FOREGOING considerations the defendant Philippine Long Distance Telephone Company is hereby ordered (A) to pay the plaintiff Gloria Esteban the sum of P20,000.00 as moral damages and P5,000.00 exemplary damages; to plaintiff Antonio Esteban the sum of P2,000.00 as moral damages and P500.00 as exemplary damages, with legal rate of interest from the date of the filing of the complaint until fully paid. The defendant is hereby ordered to pay the plaintiff the sum of P3,000.00 as attorney's fees.

(B) The third-party defendant is hereby ordered to reimburse whatever amount the defendant-third party plaintiff has paid to the plaintiff. With costs against the defendant."[6]

From this decision both PLDT and private respondents appealed, the latter appealing only as to the amount of

damages. Third-party defendant Barte did not appeal.

On September 25, 1979, the Special Second Division of the Court of Appeals rendered a decision in said appealed case, with Justice Corazon Juliano Agrava as ponente, reversing the decision of the lower court and dismissing the complaint of respondent spouses. It held that respondent Esteban spouses were negligent and consequently absolved petitioner PLDT from the claim for damages.[7] A copy of this decision was received by private respondents on October 10, 1979.[8] On October 25, 1979, said respondents filed a motion for reconsideration dated October 24, 1979.[9] On January 24, 1980, the Special Ninth Division of the Court of Appeals denied said motion for reconsideration.[10] This resolution was received by respondent spouses on February 22, 1980.[11]

On February 29, 1980, respondent Court of Appeals received private respondents' motion for leave of court to file a second motion for reconsideration, dated February 27, 1980.[12] On March 11, 1980, respondent court, in a resolution likewise penned by Justice Agrava, allowed respondents to file a second motion for reconsideration, within ten (10) days from notice thereof.[13] Said resolution was received by private respondents on April 1, 1980 but prior thereto, private respondents had already filed their second motion for reconsideration on March 7, 1980.[14]

On April 30, 1980 petitioner PLDT filed an opposition to and/or motion to dismiss said second motion for reconsideration.[15] The Court of Appeals, in view of the divergent opinions on the resolution of the second motion for reconsideration, designated two additional justices to form a division of five.[16] On September 3, 1980, said division of five promulgated its resolution, penned by Justice Mariano A. Zosa, setting aside the decision dated September 25, 1979, as well as the resolution dated January 24, 1980, and affirming in toto the decision of the lower court.[17]

On September 19, 1980, petitioner PLDT filed a motion to set aside and/or for reconsideration of the resolution of September 3, 1980, contending that the second motion for reconsideration of private respondent spouses was filed out of time and that the decision of September 25, 1979 penned by Justice Agrava was already final. It further submitted therein that the relationship of Barte and petitioner PLDT should be viewed in the light of the contract between them and, under the independent contractor rule, PLDT is not liable for the acts of an independent contractor.[18] On May 11, 1981, respondent Court of Appeals promulgated its resolution denying said motion to set aside and/or for reconsideration and affirming in toto the decision of the lower court dated October 1, 1974.[19]

Coming to this Court on a petition for review on certiorari, petitioner assigns the following errors:

1. Respondent Court of Appeals erred in not denying private respondents' second motion for reconsideration on the ground that the decision of the Special Second Division, dated September 25, 1979, and the resolution of the Special Ninth Division, dated January 24, 1980, are already final, and on the additional ground that said second motion for reconsideration is pro forma.
2. Respondent court erred in reversing the aforesaid decision and resolution and in misapplying the independent contractor rule in holding PLDT liable to respondent Esteban spouses.

A convenient resume of the relevant proceedings in the respondent court, as shown by the records and admitted by both parties, may be graphically presented as follows:

- (a) September 25, 1979, a decision was rendered by the Court of Appeals with Justice Agrava as ponente;
- (b) October 10, 1979, a copy of said decision was received by private respondents;
- (c) October 25, 1979, a motion for reconsideration was filed by private respondents;

- (d) January 24, 1980, a resolution was issued denying said motion for reconsideration;
- (e) February 22, 1980, a copy of said denial resolution was received by private respondents;
- (f) February 29, 1980, a motion for leave to file a second motion for reconsideration was filed by private respondents;
- (g) March 7, 1980, a second motion for reconsideration was filed by private respondents;
- (h) March 11, 1980, a resolution was issued allowing respondents to file a second motion for reconsideration within ten (10) days from receipt; and
- (i) September 3, 1980, a resolution was issued, penned by Justice Zosa, reversing the original decision dated September 25, 1979 and setting aside the resolution dated January 24, 1980.

From the foregoing chronology, we are convinced that both the motion for leave to file a second motion for reconsideration and, consequently, said second motion for reconsideration itself were filed out of time.

Section 1, Rule 52 of the Rules of Court, which had procedural governance at the time, provided that a second motion for reconsideration may be presented within fifteen (15) days from notice of the order or judgment deducting the time in which the first motion has been pending.[20] Private respondents having filed their first motion for reconsideration on the last day of the reglementary period of fifteen (15) days within which to do so, they had only one (1) day from receipt of the order denying said motion to file, with leave of court, a second motion for reconsideration.[21] In the present case, after their receipt on February 22, 1980 of the resolution denying their first motion for reconsideration, private respondents had two remedial options. On February 23, 1980, the remaining one (1) day of the aforesaid reglementary period, they could have filed a motion for leave of court to file a second motion for reconsideration, conceivably with a prayer for the extension of the period within which to do so. On the other hand, they could have appealed through a petition for review on certiorari to this Court within fifteen (15) days from February 23, 1980.[22] Instead, they filed a motion for leave to file a second motion for reconsideration on February 29, 1980, and said second motion for reconsideration on March 7, 1980, both of which motions were by then time-barred.

Consequently, after the expiration on February 24, 1980 of the original fifteen (15) day period, the running of which was suspended during the pendency of the first motion for reconsideration, the Court of Appeals could no longer validly take further proceedings on the merits of the case, much less to alter, modify or reconsider its aforesaid decision and/or resolution. The filing of the motion for leave to file a second motion for reconsideration by herein respondents on February 29, 1980 and the subsequent filing of the motion itself on March 7, 1980, after the expiration of the reglementary period to file the same, produced no legal effects. Only a motion for re-hearing or reconsideration filed in time shall stay the final order or judgment sought to be re-examined.[23]

The consequential result is that the resolution of respondent court of March 11, 1980 granting private respondents' aforesaid motion for leave and, giving them an extension of ten (10) days to file a second motion for reconsideration, is null and void. The period for filing a second motion for reconsideration had already expired when private respondents sought leave to file the same, and respondent court no longer had the power to entertain or grant the said motion. The aforesaid extension of ten (10) days for private respondents to file their second motion for reconsideration was of no legal consequence since it was given when there was no more period to extend. It is an elementary rule that an application for extension of time must be filed prior to the expiration of the period sought to be extended.[24] Necessarily, the discretion of respondent court to grant said extension for filing a second motion for reconsideration is conditioned upon the timeliness of the motion seeking the same.

No appeal having been taken seasonably, the respondent court's decision, dated September 25, 1979, became final

and executory on March 9, 1980. The subsequent resolutions of respondent court, dated March 11, 1980 and September 3, 1980, allowing private respondents to file a second motion for reconsideration and reversing the original decision are null and void and cannot disturb the finality of the judgment nor restore jurisdiction to respondent court. This is but in line with the accepted rule that once a decision has become final and executory it is removed from the power and jurisdiction of the court which rendered it to further alter or amend, much less revoke it.[25] The decision rendered anew is null and void.[26] The court's inherent power to correct its own errors should be exercised before the finality of the decision or order sought to be corrected, otherwise litigation will be endless and no question could be considered finally settled. Although the granting or denial of a motion for reconsideration involves the exercise of discretion,[27] the same should not be exercised whimsically, capriciously or arbitrarily, but prudently in conformity with law, justice, reason and equity.[28]

Prescinding from the aforesaid procedural lapses into the substantive merits of the case, we find no error in the findings of the respondent court in its original decision that the accident which befell private respondents was due to the lack of diligence of respondent Antonio Esteban and was not imputable to negligent omission on the part of petitioner PLDT. Such findings were reached after an exhaustive assessment and evaluation of the evidence on record, as evidenced by the respondent court's resolution of January 24, 1980 which we quote with approval:

"First. Plaintiff's jeep was running along the inside lane of Lacson Street. If it had remained on that inside lane, it would not have hit the ACCIDENT MOUND.

"Exhibit B shows, through the tiremarks, that the ACCIDENT MOUND was hit by the jeep swerving from the left that is, swerving from the inside lane. What caused the swerving is not disclosed; but, as the cause of the accident, defendant cannot be made liable for the damages suffered by plaintiffs. The accident was not due to the absence of warning signs, but to the unexplained abrupt swerving of the jeep from the inside lane. That may explain plaintiff-husband's insistence that he did not see the ACCIDENT MOUND for which reason he ran into it.

"Second. That plaintiff's jeep was on the inside lane before it swerved to hit the ACCIDENT MOUND could have been corroborated by a picture showing Lacson Street to the south of the ACCIDENT MOUND.

"It has been stated that the ditches along Lacson Street had already been covered except the 3 or 4 meters where the ACCIDENT MOUND was located. Exhibit B-1 shows that the ditches on Lacson Street north of the ACCIDENT MOUND had already been covered, but not in such a way as to allow the outer lane to be freely and conveniently passable to vehicles. The situation could have been worse to the south of the ACCIDENT MOUND for which reason no picture of the ACCIDENT MOUND facing south was taken.

"Third. Plaintiff's jeep was not running at 25 kilometers an hour as plaintiff-husband claimed. At that speed, he could have braked the vehicle the moment it struck the ACCIDENT MOUND. The jeep would not have climbed the ACCIDENT MOUND several feet as indicated by the tiremarks in Exhibit B. The jeep must have been running quite fast. If the jeep had been braked at 25 kilometers an hour, plaintiffs would not have been thrown against the windshield and they would not have suffered their injuries.

"Fourth. If the accident did not happen because the jeep was running quite fast on the inside lane and for some reason or other it had to swerve suddenly to the right and had to climb over the ACCIDENT MOUND, then plaintiff-husband had not exercised the diligence of a good father of a family to avoid the accident. With the drizzle, he should not have run on dim lights, but should have put on his regular lights which should have made him see the ACCIDENT MOUND in time. If he was running on the outside lane at 25 kilometers an hour, even on dim lights, his failure to see the ACCIDENT MOUND in time to brake the car was negligence on his part. The ACCIDENT MOUND was relatively big and visible, being 2 to 3 feet high and 1-1/2 feet wide. If he did not see the ACCIDENT MOUND in time, he would not have seen any warning sign either. He knew of the existence and location of the ACCIDENT MOUND, having seen it many previous times. With ordinary

precaution, he should have driven his jeep on the night of the accident so as to avoid hitting the ACCIDENT MOUND."[29]

The above findings clearly show that the negligence of respondent Antonio Esteban was not only contributory to his injuries and those of his wife but goes to the very cause of the occurrence of the accident, as one of its determining factors, and thereby precludes their right to recover damages.[30] The perils of the road were known to, hence appreciated and assumed by, private respondents. By exercising reasonable care and prudence, respondent Antonio Esteban could have avoided the injurious consequences of his act, even assuming arguendo that there was some alleged negligence on the part of petitioner.

The presence of warning signs could not have completely prevented the accident; the only purpose of said signs was to inform and warn the public of the presence of excavations on the site. The private respondents already knew of the presence of said excavations. It was not the lack of knowledge of these excavations which caused the jeep of respondents to fall into the excavation but the unexplained sudden swerving of the jeep from the inside lane towards the accident mound. As opined in some quarters, the omission to perform a duty, such as the placing of warning signs on the site of the excavation, constitutes the proximate cause only when the doing of the said omitted act would have prevented the injury.[31] It is basic that private respondents cannot charge PLDT for their injuries where their own failure to exercise due and reasonable care was the cause thereof. It is both a societal norm and necessity that one should exercise a reasonable degree of caution for his own protection. Furthermore, respondent Antonio Esteban had the last clear chance or opportunity to avoid the accident, notwithstanding the negligence he imputes to petitioner PLDT. As a resident of Lacson Street, he passed on that street almost everyday and had knowledge of the presence and location of the excavations there. It was his negligence that exposed him and his wife to danger, hence he is solely responsible for the consequences of his imprudence.

Moreover, we also sustain the findings of respondent Court of Appeals in its original decision that there was insufficient evidence to prove any negligence on the part of PLDT. We have for consideration only the self-serving testimony of respondent Antonio Esteban and the unverified photograph of merely a portion of the scene of the accident. The absence of a police report of the incident and the non-submission of a medical report from the hospital where private respondents were allegedly treated have not even been satisfactorily explained.

As aptly observed by respondent court in its aforecited extended resolution of January 24, 1980 -

"(a) There was no third party eye-witness of the accident. As to how the accident occurred, the Court can only rely on the testimonial evidence of plaintiffs themselves, and such evidence should be very carefully evaluated, with defendant, as the party being charged, being given the benefit of any doubt. Definitely without ascribing the same motivation to plaintiffs, another person could have deliberately engineered a similar accident in the hope and expectation that the Court can grant him substantial moral and exemplary damages from the big corporation that defendant is. The statement is made only to stress the disadvantageous position of defendant which would have extreme difficulty in contesting such person's claim. If there were no witness or record available from the police department of Bacolod, defendant would not be able to determine for itself which of the conflicting testimonies of plaintiffs is correct as to the report or non-report of the accident to the police department."[32]

A person claiming damages for the negligence of another has the burden of proving the existence of such fault or negligence causative thereof. The facts constitutive of negligence must be affirmatively established by competent evidence.[33] Whosoever relies on negligence for his cause of action has the burden in the first instance of proving the existence of the same if contested, otherwise his action must fail.

WHEREFORE, the resolutions of respondent Court of Appeals, dated March 11, 1980 and September 3, 1980, are hereby SET ASIDE. Its original decision, promulgated on September 25, 1979, is hereby REINSTATED and

AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Civil Case No. 8681, Judge Ernesto Tengco, presiding.

[2] Rollo, 49-51.

[3] Ibid., 52-55.

[4] Ibid., 56-58.

[5] Ibid., 59-61.

[6] Ibid., 70.

[7] CA-G.R. No. 57352-R, Justices Jose B. Jimenez and Benjamin K. Gorospe concurred. Rollo, 72-79.

[8] Rollo, 21, 156.

[9] Ibid., 80-85, 156.

[10] Ibid., 93-98.

[11] Ibid., 21, 158.

[12] Rollo, CA-G.R. No. 57352-R, 141-143.

[13] Ibid., id., 155-156.

[14] Ibid., id., 144-153.

[15] Ibid., id., 168-171.

[16] Ibid., id., 185-196.

[17] Rollo, 111-118.

[18] Ibid., 119-120.

[19] Ibid., 137-138.

[20] The rule has since been modified by Sec. 11, B.P. 129, effective August 14, 1981, which provided that in the then Intermediate Appellate Court a second motion for reconsideration would be allowed only if the first motion for reconsideration resulted in the reversal or substantial modification of the original decision or final resolution. Thereafter, effective July 28, 1986, Sec. 11 of B.P. 129 was amended by Sec. 6 of Executive Order No. 33 providing that in the present Court of Appeals no second motion for reconsideration from the same party shall be entertained.

[21] In the computation of the reglementary period, especially if it is interrupted by the filing of a pleading, the date when the pleading is filed and the date of receipt of the judgment or order thereon are to be excluded (Lloren, etc. vs. De Veyra, etc., et al., 4 SCRA 637 [1962]; De las Alas, et al. vs. Court of Appeals, et al., 83 SCRA 200 [1978]).

[22] Sec. 1, Rule 45, Rules of Court; *Serrano vs. Court of Appeals, et al.*, 139 SCRA 179 (1985).

[23] Sec. 3, Rule 52, Rules of Court.

[24] *Galima, et al. vs. Court of Appeals, et al.*, 16 SCRA 140 (1966); *Tuazon vs. Court of Appeals, et al.*, 43 SCRA 664 (1972).

[25] *Comia, et al. vs. Nicolas, etc., et al.*, 29 SCRA 492 (1969).

[26] *Heirs of Patriaca, et al., vs. Court of Appeals, et al.*, 124 SCRA 410 (1983).

[27] *Lucero vs. Dacayo, etc., et al.*, 22 SCRA 1004 (1963).

[28] *Gardner, et al. vs. Court of Appeals, et al.*, 131 SCRA 585 (1984).

[29] *Rollo*, 97-98.

[30] *Rakes vs. Atlantic Gulf & Pacific Co.*, 7 Phil. 359 (1907).

[31] *Sangco, Torts & Damages*, 1978 Rev. Ed., 150.

[32] *Rollo*, 95.

[33] *Barcelo, etc. vs. Manila Electric Railroad & Light Co.*, 29 Phil. 351 (1951); Sec. 1, Rule 131, Rules of Court; 1 *Jones on Evidence*, 5th Ed., 370.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.