

**PHOENIX CONSTRUCTION, INC. AND ARMANDO U. CARBONEL,
PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT AND
LEONARDO DIONISIO, RESPONDENTS.***G.R. No. 65295. March 10, 1987*

Ponente: FELICIANO, J.

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In the early morning of 15 November 1975 — at about 1:30 a.m. — private respondent Leonardo Dionisio was on his way home — he lived in 1214-B Zamora Street, Bangkal, Makati - from a cocktails-and-dinner meeting with his boss, the general manager of a marketing corporation. During the cocktails phase of the evening, Dionisio had taken "a shot or two" of liquor. Dionisio was driving his Volkswagen car and had just crossed the intersection of General Lacuna and General Santos Streets at Bangkal, Makati, not far from his home, and was proceeding down General Lacuna Street, when his car headlights (in his allegation) suddenly failed. He switched his headlights on "bright" and thereupon he saw a Ford dump truck looming some 2-1/2 meters away from his car. The dump truck, owned by and registered in the name of petitioner Phoenix Construction Inc. ("Phoenix"), was parked on the right hand side of General Lacuna Street (i.e., on the right hand side of a person facing in the same direction toward which Dionisio's car was proceeding), facing the oncoming traffic. The dump truck was parked askew (not parallel to the street curb) in such a manner as to stick out onto the street, partly blocking the way of oncoming traffic. There were no lights nor any so-called "early warning" reflector devices set anywhere near the dump truck, front or rear. The dump truck had earlier that evening been driven home by petitioner Armando U. Carbonel, its regular driver, with the permission of his employer Phoenix, in view of work scheduled to be carried out early the following morning. Dionisio claimed that he tried to avoid a collision by swerving his car to the left but it was too late and his car smashed into the dump truck. As a result of the collision, Dionisio suffered some physical injuries including some permanent facial scars, a "nervous breakdown" and loss of two gold bridge dentures.

Dionisio commenced an action for damages in the Court of First Instance of Pampanga basically claiming that the legal and proximate cause of his injuries was the negligent manner in which Carbonel had parked the dump truck entrusted to him by his employer Phoenix. Phoenix and Carbonel, on the other hand, countered that the proximate cause of Dionisio's injuries was his own recklessness in driving fast at the time of the accident, while under the influence of liquor, without his headlights on and without a curfew pass. Phoenix also sought to establish that it had exercised due care in the selection and supervision of the dump truck driver.

The trial court rendered judgment in favor of Dionisio and against Phoenix and Carbonel and ordered the latter:

- "(1) To pay plaintiff jointly and severally the sum of P15,000.00 for hospital bills and the replacement of the lost dentures of plaintiff;
- (2) To pay plaintiff jointly and severally the sum of P150,000.00 as loss of expected income for plaintiff brought about the accident in controversy and which is the result of the negligence of the defendants;
- (3) To pay the plaintiff jointly and severally the sum of P100,000.00 as moral damages for the unexpected and

sudden withdrawal of plaintiff from his lifetime career as a marketing man; mental anguish, wounded feeling, serious anxiety, social humiliation, besmirched reputation, feeling of economic insecurity, and the untold sorrows and frustration in life experienced by plaintiff and his family since the accident in controversy up to the present time;

(4) To pay plaintiff jointly and severally the sum of P10,000.00 as exemplary damages for the wanton disregard of defendants to settle amicably this case with the plaintiff before the filing of this case in court for a smaller amount.

(5) To pay the plaintiff jointly and severally the sum of P4,500.00 due as and for attorney's fees; and

(6) The cost of suit." (Underscoring supplied)

Phoenix and Carbonel appealed to the Intermediate Appellate Court. That court in CA-G.R. No. 65476 affirmed the decision of the trial court but modified the award of damages to the following extent:

- The award of P15,000.00 as compensatory damages was reduced to P6,460.71, the latter being the only amount that the appellate court found the plaintiff to have proved as actually sustained by him;
- The award of P150,000.00 as loss of expected income was reduced to P100,000.00, basically because Dionisio had voluntarily resigned his job such that, in the opinion of the appellate court, his loss of income "was not solely attributable to the accident in question"; and
- The award of P100,000.00 as moral damages was held by the appellate court as excessive and unconscionable and hence reduced to P50,000.00.

The award of P10,000.00 as exemplary damages and P4,500.00 as attorney's fees and costs remained untouched.

This decision of the Intermediate Appellate Court is now before us on a petition for review.

Both the trial court and the appellate court had made fairly explicit findings of fact relating to the manner in which the dump truck was parked along General Lacuna Street on the basis of which both courts drew the inference that there was negligence on the part of Carbonel, the dump truck driver, and that this negligence was the proximate cause of the accident and Dionisio's injuries. We note, however, that both courts failed to pass upon the defense raised by Carbonel and Phoenix that the true legal and proximate cause of the accident was not the way in which the dump truck had been parked but rather the reckless way in which Dionisio had driven his car that night when he smashed into the dump truck. The Intermediate Appellate Court in its questioned decision casually conceded that Dionisio was "in some way, negligent" but apparently failed to see the relevance of Dionisio's negligence and made no further mention of it. We have examined the record both before the trial court and the Intermediate Appellate Court and we find that both parties had placed into the record sufficient evidence on the basis of which the trial court and the appellate court could have and should have made findings of fact relating to the alleged reckless manner in which Dionisio drove his car that night. The petitioners Phoenix and Carbonel contend that if there was negligence in the manner in which the dump truck was parked, that negligence was merely a "passive and static condition" and that private respondent Dionisio's recklessness constituted an intervening, efficient cause determinative of the accident and the injuries he sustained. The need to administer substantial justice as between the parties in this case, without having to remand it back to the trial court after eleven years, compels us to address directly the contention put forward by the petitioners and to examine for ourselves the record pertaining to Dionisio's alleged negligence which must bear upon the liability, or extent of liability, of Phoenix and Carbonel.

There are four factual issues that need to be looked into: (a) whether or not private respondent Dionisio had a curfew pass valid and effective for that eventful night; (b) whether Dionisio was driving fast or speeding just

before the collision with the dump truck; (c) whether Dionisio had purposely turned off his car's headlights before contact with the dump truck or whether those headlights accidentally malfunctioned moments before the collision; and (d) whether Dionisio was intoxicated at the time of the accident.

As to the first issue relating to the curfew pass, it is clear that no curfew pass was found on the person of Dionisio immediately after the accident nor was any found in his car. Phoenix's evidence here consisted of the testimony of Patrolman Cuyno who had taken Dionisio, unconscious, to the Makati Medical Center for emergency treatment immediately after the accident. At the Makati Medical Center, a nurse took off Dionisio's clothes and examined them along with the contents of pockets together with Patrolman Cuyno.[1] Private respondent Dionisio was not able to produce any curfew pass during the trial. Instead, he offered the explanation that his family may have misplaced his curfew pass. He also offered a certification (dated two years after the accident) issued by one Major Benjamin N. Libarnes of the Zone Integrated Police Intelligence Unit of Camp Olivas, San Fernando, Pampanga, which was said to have authority to issue curfew passes for Pampanga and Metro Manila. This certification was to the effect that private respondent Dionisio had a valid curfew pass. This certification did not, however, specify any pass serial number or date or period of effectivity of the supposed curfew pass. We find that private respondent Dionisio was unable to prove possession of a valid curfew pass during the night of the accident and that the preponderance of evidence shows that he did not have such a pass during that night. The relevance of possession or non-possession of a curfew pass that night lies in the light it tends to shed on the other related issues: whether Dionisio was speeding home and whether he had indeed purposely put out his headlights before the accident, in order to avoid detection and possibly arrest by the police in the nearby police station for travelling after the onset of curfew without a valid curfew pass.

On the second issue — whether or not Dionisio was speeding home that night — both the trial court and the appellate court were completely silent.

The defendants in the trial court introduced the testimony of Patrolman Cuyno who was at the scene of the accident almost immediately after it occurred, the police station where he was based being barely 200 meters away. Patrolman Cuyno testified that people who had gathered at the scene of the accident told him that Dionisio's car was "moving fast" and did not have its headlights on.[2] Dionisio, on the other hand, claimed that he was travelling at a moderate speed at 30 kilometers per hour and had just crossed the intersection of General Santos and General Lacuna Streets and had started to accelerate when his headlights failed just before the collision took place.[3]

Private respondent Dionisio asserts that Patrolman Cuyno's testimony was hearsay and did not fall within any of the recognized exceptions to the hearsay rule since the facts he testified to were not acquired by him through official information and had not been given by the informants pursuant to any duty to do so. Private respondent's objection fails to take account of the fact that the testimony of Patrolman Cuyno is admissible not under the official records exception to the hearsay rule[4] but rather as part of the *res gestae*. [5] Testimonial evidence under this exception to the hearsay rule consists of excited utterances made on the occasion of an occurrence or event sufficiently startling in nature so as to render inoperative the normal reflective thought processes of the observer and hence made as a spontaneous reaction to the occurrence or event, and not the result of reflective thought.[6]

We think that an automobile speeding down a street and suddenly smashing into a stationary object in the dead of night is a sufficiently startling event as to evoke spontaneous, rather than reflective, reactions from observers who happened to be around at that time. The testimony of Patrolman Cuyno was therefore admissible as part of the *res gestae* and should have been considered by the trial court. Clearly, substantial weight should have been ascribed to such testimony, even though it did not, as it could not, have purported to describe quantitatively the precise velocity at which Dionisio was travelling just before impact with the Phoenix dump truck.

A third related issue is whether Dionisio purposely turned off his headlights, or whether his headlights accidentally malfunctioned, just moments before the accident. The Intermediate Appellate Court expressly found that the headlights of Dionisio's car went off as he crossed the intersection but was non-committal as to why they did so. It is the petitioners' contention that Dionisio purposely shut off his headlights even before he reached the intersection so as not to be detected by the police in the police precinct which he (being a resident in the area) knew was not far away from the intersection. We believe that the petitioners' theory is a more credible explanation than that offered by private respondent Dionisio — i.e., that he had his headlights on but that, at the crucial moment, these had in some mysterious if convenient way malfunctioned and gone off, although he succeeded in switching his lights on again at "bright" split seconds before contact with the dump truck.

A fourth and final issue relates to whether Dionisio was intoxicated at the time of the accident. The evidence here consisted of the testimony of Patrolman Cuyno to the effect that private respondent Dionisio smelled of liquor at the time he was taken from his smashed car and brought to the Makati Medical Center in an unconscious condition.[7] This testimony has to be taken in conjunction with the admission of Dionisio that he had taken "a shot or two" of liquor before dinner with his boss that night. We do not believe that this evidence is sufficient to show that Dionisio was so heavily under the influence of liquor as to constitute his driving a motor vehicle per se an act of reckless imprudence.[8] There simply is not enough evidence to show how much liquor he had in fact taken and the effects of that upon his physical faculties or upon his judgment or mental alertness. We are also aware that "one shot or two" of hard liquor may affect different people differently.

The conclusion we draw from the factual circumstances outlined above is that private respondent Dionisio was negligent the night of the accident. He was hurrying home that night and driving faster than he should have been. Worse, he extinguished his headlights at or near the intersection of General Lacuna and General Santos Streets and thus did not see the dump truck that was parked askew and sticking out onto the road lane.

Nonetheless, we agree with the Court of First Instance and the Intermediate Appellate Court that the legal and proximate cause of the accident and of Dionisio's injuries was the wrongful or negligent manner in which the dump truck was parked — in other words, the negligence of petitioner Carbonel. That there was a reasonable relationship between petitioner Carbonel's negligence on the one hand and the accident and respondent's injuries on the other hand, is quite clear. Put in a slightly different manner, the collision of Dionisio's car with the dump truck was a natural and foreseeable consequence of the truck driver's negligence.

The petitioners, however, urge that the truck driver's negligence was merely a "passive and static condition" and that private respondent Dionisio's negligence was an "efficient intervening cause", and that consequently Dionisio's negligence must be regarded as the legal and proximate cause of the accident rather than the earlier negligence of Carbonel. We note that the petitioners' arguments are drawn from a reading of some of the older cases in various jurisdictions in the United States but we are unable to persuade ourselves that these arguments have any validity for our jurisdiction. We note, firstly, that even in the United States, the distinctions between "cause" and "condition" which the petitioners would have us adopt have already been "almost entirely discredited". Professors Prosser and Keeton make this quite clear:

"Cause and Condition. Many courts have sought to distinguish between the active "cause" of the harm and the existing "conditions" upon which that cause operated. If the defendant has created only a passive static condition which made the damage possible, the defendant is said not to be liable. But so far as the fact of causation is concerned, in the sense of necessary antecedents which have played an important part in producing the result, it is quite impossible to distinguish between active forces and passive situations, particularly since, as is invariably the case, the latter are the result of other active forces which have gone before. The defendant who spills gasoline about the premises creates a "condition;" but the act may be culpable because of the danger of fire. When a spark

ignites the gasoline, the condition has done quite as much to bring about the fire as the spark; and since that is the very risk which the defendant has created, the defendant will not escape responsibility. Even the lapse of a considerable time during which the "condition" remains static will not necessarily affect liability; one who digs a trench in the highway may still be liable to another who falls into it a month afterward. "Cause" and "condition" still find occasional mention in the decisions; but the distinction is now almost entirely discredited. So far as it has any validity at all, it must refer to the type of case where the forces set in operation by the defendant have come to rest in a position of apparent safety, and some new force intervenes. But even in such cases, it is not the distinction between "cause" and "condition" which is important, but the nature of the risk and the character of the intervening cause." [9]

We believe, secondly, that the truck driver's negligence far from being a "passive and static condition" was rather an indispensable and efficient cause. The collision between the dump truck and the private respondent's car would in all probability not have occurred had the dump truck not been parked askew without any warning lights or reflector devices. The improper parking of the dump truck created an unreasonable risk of injury for anyone driving down General Lacuna Street and for having so created this risk, the truck driver must be held responsible. In our view, Dionisio's negligence, although later in point of time than the truck driver's negligence and therefore closer to the accident, was not an efficient intervening or independent cause. What the petitioners describe as an "intervening cause" was no more than a foreseeable consequence of the risk created by the negligent manner in which the truck driver had parked the dump truck. In other words, the petitioner truck driver owed a duty to private respondent Dionisio and others similarly situated not to impose upon them the very risk the truck driver had created. Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the *juris vinculum* of liability. It is helpful to quote once more from Prosser and Keeton:

"Foreseeable Intervening Causes. If the intervening cause is one which in ordinary human experience is reasonably to be anticipated, or one which the defendant has reason to anticipate under the particular circumstances, the defendant may be negligent, among other reasons, because of failure to guard against it; or the defendant may be negligent only for that reason. Thus one who sets a fire may be required to foresee that an ordinary, usual and customary wind arising later will spread it beyond the defendant's own property, and therefore to take precautions to prevent that event. The person who leaves combustible or explosive material exposed in a public place may foresee the risk of fire from some independent source. x x x In all of these cases there is an intervening cause combining with the defendant's conduct to produce the result, and in each case the defendant's negligence consists in failure to protect the plaintiff against that very risk.

Obviously the defendant cannot be relieved from liability by the fact that the risk or a substantial and important part of the risk, to which the defendant has subjected the plaintiff has indeed come to pass. Foreseeable intervening forces are within the scope of the original risk, and hence of the defendant's negligence. The courts are quite generally agreed that intervening causes which fall fairly in this category will not supersede the defendant's responsibility.

Thus it has been held that a defendant will be required to anticipate the usual weather of the vicinity, including all ordinary forces of nature such as usual wind or rain, or snow or frost or fog or even lightning; that one who leaves an obstruction on the road or a railroad track should foresee that a vehicle or a train will run into it; x x x.

The risk created by the defendant may include the intervention of the foreseeable negligence of others. x x x [T]he standard of reasonable conduct may require the defendant to protect the plaintiff against 'that occasional negligence which is one of the ordinary incidents of human life, and therefore to be anticipated'. Thus, a defendant who blocks the sidewalk and forces the plaintiff to walk in a street where the plaintiff will be exposed

to the risks of heavy traffic becomes liable when the plaintiff is run down by a car, even though the car is negligently driven; and one who parks an automobile on the highway without lights at night is not relieved of responsibility when another negligently drives into it. —"[10]

We hold that private respondent Dionisio's negligence was "only contributory", that the "immediate and proximate cause" of the injury remained the truck driver's "lack of due care" and that consequently respondent Dionisio may recover damages though such damages are subject to mitigation by the courts (Article 2179, Civil Code of the Philippines).

Petitioners also ask us to apply what they refer to as the "last clear chance" doctrine. The theory here of petitioners is that while the petitioner truck driver was negligent, private respondent Dionisio had the "last clear chance" of avoiding the accident and hence his injuries, and that Dionisio having failed to take that "last clear chance" must bear his own injuries alone. The last clear chance doctrine of the common law was imported into our jurisdiction by *Picart vs. Smith*[11] but it is a matter for debate whether, or to what extent, it has found its way into the Civil Code of the Philippines. The historical function of that doctrine in the common law was to mitigate the harshness of another common law doctrine or rule — that of contributory negligence.[12] The common law rule of contributory negligence prevented any recovery at all by a plaintiff who was also negligent, even if the plaintiff's negligence was relatively minor as compared with the wrongful act or omission of the defendant.[13] The common law notion of last clear chance permitted courts to grant recovery to a plaintiff who had also been negligent provided that the defendant had the last clear chance to avoid the casualty and failed to do so.[14] Accordingly, it is difficult to see what role, if any, the common law last clear chance doctrine has to play in a jurisdiction where the common law concept of contributory negligence as an absolute bar to recovery by the plaintiff, has itself been rejected, as it has been in Article 2179 of the Civil Code of the Philippines.[15]

Is there perhaps a general concept of "last clear chance" that may be extracted from its common law matrix and utilized as a general rule in negligence cases in a civil law jurisdiction like ours? We do not believe so. Under Article 2179, the task of a court, in technical terms, is to determine whose negligence — the plaintiff's or the defendant's — was the legal or proximate cause of the injury. That task is not simply or even primarily an exercise in chronology or physics, as the petitioners seem to imply by the use of terms like "last" or "intervening" or "immediate". The relative location in the continuum of time of the plaintiff's and the defendant's negligent acts or omissions, is only one of the relevant factors that may be taken into account. Of more fundamental importance are the nature of the negligent act or omission of each party and the character and gravity of the risks created by such act or omission for the rest of the community. The petitioners urge that the truck driver (and therefore his employer) should be absolved from responsibility for his own prior negligence because the unfortunate plaintiff failed to act with that increased diligence which had become necessary to avoid the peril precisely created by the truck driver's own wrongful act or omission. To accept this proposition is to come too close to wiping out the fundamental principle of law that a man must respond for the foreseeable consequences of his own negligent act or omission. Our law on quasi-delicts seeks to reduce the risks and burdens of living in society and to allocate them among the members of society. To accept the petitioners' proposition must tend to weaken the very bonds of society.

Petitioner Carbonel's proven negligence creates a presumption of negligence on the part of his employer Phoenix[16] in supervising its employees properly and adequately. The respondent appellate court in effect found, correctly in our opinion, that Phoenix was not able to overcome this presumption of negligence. The circumstance that Phoenix had allowed its truck driver to bring the dump truck to his home whenever there was work to be done early the following morning, when coupled with the failure to show any effort on the part of Phoenix to supervise the manner in which the dump truck is parked when away from company premises, is an affirmative showing of

culpa in vigilando on the part of Phoenix.

Turning to the award of damages and taking into account the comparative negligence of private respondent Dionisio on one hand and petitioners Carbonel and Phoenix upon the other hand,[17] we believe that the demands of substantial justice are satisfied by allocating most of the damages on a 20-80 ratio. Thus, 20% of the damages awarded by the respondent appellate court, except the award of P10,000.00 as exemplary damages and P4,500.00 as attorney's fees and costs, shall be borne by private respondent Dionisio; only the balance of 80% needs to be paid by petitioners Carbonel and Phoenix who shall be solidarily liable therefor to the former. The award of exemplary damages and attorney's fees and costs shall be borne exclusively by the petitioners. Phoenix is of course entitled to reimbursement from Carbonel.[18] We see no sufficient reason for disturbing the reduce award of damages made by the respondent appellate court.

WHEREFORE, the decision of the respondent appellate court is modified by reducing the aggregate amount of compensatory damages, loss of expected income and moral damages private respondent Dionisio is entitled to by 20% of such amount. Costs against the petitioners.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, Gancayco, and Sarmiento, JJ., concur.

Melencio-Herrera, J., took no part being on official leave.

[1] TSN, 16 March 1978, pp. 25-26.

[2] TSN, 16 March 1978, p. 13.

[3] TSN, 23 February 1977, pp. 13-14; TSN, 7 October 1977, pp. 24-25.

[4] Rule 130, Section 38, Rules of Court.

[5] Rule 130, Section 36, Rules of Court.

[6] *People v. Berame*, 72 SCRA 184 [1976]; McCormick on Evidence, Section 297 [3rd ed., 1984].

[7] TSN, 16 March 1978, pp. 18-19.

[8] Compare *Wright v. Manila Railroad Co.*, 28 Phil. 116 (1914), where it was held, among others, that "[m]ere intoxication is not negligence, nor does the mere fact of intoxication establish a want of ordinary care. It is but a circumstance to be considered with the other evidence tending to prove negligence." *Id.*, at 125.

[9] *The Law on Torts* [5th ed.; 1984], pp. 277-278; underlining supplied; footnotes omitted.

[10] *Ibid*, pp. 303-305; underlining supplied; footnotes omitted.

[11] 37 Phil. 809 (1918).

[12] *Prosser & Keeton*, supra note 9, p. 464 and note 11.

[13] See *Rakes v. Manila Railroad Co.*, 7 Phil. 359, at 370 (1907).

[14] MacIntyre, *The Rationale of Last Clear Chance*, 53 Harv. L. Rev. 1225 (1940) and James, *Last Clear Chance: A Transitional Doctrine*, 47 Yale L.J. 704 (1938).

[15] See *Rakes*, 7 Phil. at 374.

[16] Poblete v. Fabros, 93 SCRA 202 (1979); Umali v. Bacani, 69 SCRA 263 (1976); and Saludaes v. Martinez, 29 SCRA 745 (1969).

[17] See Rakes v. Atlantic, Gulf and Pacific Co., 7 Phil. 359, 370-375 (1907), where the Court allocated the damages on a 50-50 basis between plaintiff and defendant applying the notion of comparative negligence or proportional damages. Cf. Taylor v. Manila Electric Railroad and Light Co., 16 Phil. 8 at 29 (1910).

[18] Lanuzo v. Ping, 100 SCRA 205 (1980).

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