

**GEORGE MCKEE AND ARACELI KOH MCKEE, PETITIONERS, VS.
INTERMEDIATE APPELLATE COURT, JAIME TAYAG AND ROSALINDA
MANALO, RESPONDENTS.***G.R. No. 68102. July 16, 1992*

Ponente: DAVIDE, JR., J.

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Petitioners urge this Court to review and reverse the Resolution of the Court of Appeals in C.A.-G.R. CV Nos. 69040-41, promulgated on 3 April 1984, which set aside its previous Decision dated 29 November 1983 reversing the Decision of the trial court which dismissed petitioners' complaints in Civil Case No. 4477 and Civil Case No. 4478 of the then Court of First Instance (now Regional Trial Court) of Pampanga entitled "Carmen Dayrit Koh, Leticia Koh, Julieta Koh Tuquero, Araceli Koh McKee and Elizabeth Koh Turla vs. Jaime Tayag and Rosalinda Manalo", and "George McKee and Araceli Koh McKee vs. Jaime Tayag and Rosalinda Manalo", respectively, and granted the private respondents' counterclaim for moral damages, attorney's fees and litigation expenses.

The said civil cases for damages based on quasi-delict were filed as a result of a vehicular accident which led to the deaths of Jose Koh, Kim Koh McKee and Loida Bondoc and caused physical injuries to George Koh McKee, Christopher Koh McKee and petitioner Araceli Koh McKee.

Petitioners in G.R. No. 68102, parents of the minors George Koh McKee, Christopher Koh McKee and the deceased Kim Koh McKee, were the plaintiffs in Civil Case No. 4478, while petitioner Carmen Dayrit Koh and her co-petitioners in G.R. No. 68103, who are the wife and children, respectively, of the late Jose Koh, were the plaintiffs in Civil Case No. 4477. Upon the other hand, private respondents are the owners of the cargo truck which figured in the mishap; a certain Ruben Galang was the driver of the truck at the time of the accident.

The antecedent facts are not disputed.

Between nine and ten o'clock in the morning of 8 January 1977, in Pulong Pulo Bridge along MacArthur Highway, between Angeles City and San Fernando, Pampanga, a head-on-collision took place between an International cargo truck, Loadstar, with Plate No. RF912-T Philippines '76 owned by private respondents, and driven by Ruben Galang, and a Ford Escort car bearing Plate No. S2-850 Pampanga '76 driven by Jose Koh. The collision resulted in the deaths of Jose Koh, Kim Koh McKee and Loida Bondoc, and physical injuries to George Koh McKee, Christopher Koh McKee and Araceli Koh McKee, all passengers of the Ford Escort.

Jose Koh was the father of petitioner Araceli Koh McKee, the mother of minors George, Christopher and Kim Koh McKee. Loida Bondoc, on the other hand, was the baby sitter of one and a half year old Kim. At the time of the collision, Kim was seated on the lap of Loida Bondoc who was at the front passenger's seat of the car while Araceli and her two (2) sons were seated at the car's back seat.

Immediately before the collision, the cargo truck, which was loaded with two hundred (200) cavans of rice weighing about 10,000 kilos, was traveling southward from Angeles City to San Fernando Pampanga, and was

bound for Manila. The Ford Escort, on the other hand, was on its way to Angeles City from San Fernando. When the northbound car was about ten (10) meters away from the southern approach of the bridge, two (2) boys suddenly darted from the right side of the road and into the lane of the car. The boys were moving back and forth, unsure of whether to cross all the way to the other side or turn back. Jose Koh blew the horn of the car, swerved to the left and entered the lane of the truck; he then switched on the headlights of the car, applied the brakes and thereafter attempted to return to his lane. Before he could do so, his car collided with the truck. The collision occurred in the lane of the truck, which was the opposite lane, on the said bridge.

The incident was immediately reported to the police station in Angeles City; consequently, a team of police officers was forthwith dispatched to conduct an on the spot investigation. In the sketch[1] prepared by the investigating officers, the bridge is described to be sixty (60) "footsteps" long and fourteen (14) "footsteps" wide -- seven (7) "footsteps" from the center line to the inner edge of the sidewalk on both sides.[2] Pulong Pulo Bridge, which spans a dry brook, is made of concrete with soft shoulders and concrete railings on both sides about three (3) feet high.

The sketch of the investigating officer discloses that the right rear portion of the cargo truck was two (2) "footsteps" from the edge of the right sidewalk, while its left front portion was touching the center line of the bridge, with the smashed front side of the car resting on its front bumper. The truck was about sixteen (16) "footsteps" away from the northern end of the bridge while the car was about thirty-six (36) "footsteps" from the opposite end. Skid marks produced by the right front tire of the truck measured nine (9) "footsteps", while skid marks produced by the left front tire measured five (5) "footsteps". The two (2) rear tires of the truck, however, produced no skid marks.

In his statement to the investigating police officers immediately after the accident, Galang admitted that he was traveling at thirty (30) miles (48 kilometers) per hour.

As a consequence of the collision, two (2) cases, Civil Case No. 4477 and No. 4478, were filed on 31 January 1977 before the then Court of First Instance of Pampanga and were raffled to Branch III and Branch V of the said court, respectively. In the first, herein petitioners in G.R. No. 68103 prayed for the award of P12,000.00 as indemnity for the death of Jose Koh, P150,000.00 as moral damages, P60,000.00 as exemplary damages, P10,000.00 for litigation expenses, P6,000.00 for burial expenses, P3,650.00 for the burial lot and P9,500.00 for the tomb, plus attorney's fees.[3] In the second case, petitioners in G.R. No. 68102 prayed for the following: (a) in connection with the death of Kim McKee, the sum of P12,000.00 as death benefit, P3,150.00 for funeral services, P3,650.00 for the cemetery lot, P3,000.00 for the tomb, P50,000.00 as moral damages, P10,000.00 as exemplary damages and P2,000.00 as miscellaneous damages; (b) in the case of Araceli Koh McKee, in connection with the serious physical injuries suffered, the sum of P100,000.00 as moral damages, P20,000.00 as exemplary damages, P12,000.00 for loss of earnings, P5,000.00 for the hospitalization expenses up to the date of the filing of the complaint; and (c) with respect to George McKee, Jr., in connection with the serious physical injuries suffered, the sum of P50,000.00 as moral damages, P20,000.00 as exemplary damages and the following medical expenses: P3,400 payable to the Medical Center, P3,500.00 payable to the St. Francis Medical Center, P5,175.00 payable to the Clark Air Base Hospital, and miscellaneous expenses amounting to P5,000.00. They also sought an award of attorney's fees amounting to 25% of the total award plus traveling and hotel expenses, with costs.[4]

On 1 March 1977, an Information charging Ruben Galang with the crime of "Reckless Imprudence Resulting to (sic) Multiple Homicide and Physical Injuries and Damage to Property" was filed with the trial court. It was docketed as Criminal Case No. 3751 and was raffled to Branch V of the court, the same Branch where Civil Case No. 4478 was assigned.[5]

In their Answer with Counterclaim in Civil Case No. 4477, private respondents asserted that it was the Ford Escort car which "invaded and bumped (sic) the lane of the truck driven by Ruben Galang" and, as counterclaim, prayed for the award of P15,000.00 as attorney's fees, P20,000.00 as actual and liquidated damages, P100,000.00 as moral damages and P30,000.00 as business losses.[6] In Civil Case No. 4478, private respondents first filed a motion to dismiss on grounds of pendency of another action (Civil Case No. 4477) and failure to implead an indispensable party, Ruben Galang, the truck driver; they also filed a motion to consolidate the case with Civil Case No. 4477 pending before Branch III of the same court, which was opposed by the plaintiffs.[7] Both motions were denied by Branch V, then presided over by Judge Ignacio Capulong. Thereupon, private respondents filed their Answer with Counterclaim[8] wherein they alleged that Jose Koh was the person "at fault having approached the lane of the truck driven by Ruben Galang, x x x which was on the right lane going towards Manila and at a moderate speed observing all traffic rules and regulations applicable under the circumstances then prevailing;" in their counterclaim, they prayed for an award of damages as may be determined by the court after due hearing, and the sums of P10,000.00 as attorney's fees and P5,000.00 as expenses of litigation.

Petitioners filed their Answers to the Counterclaims in both cases.

To expedite the proceedings, the plaintiffs in Civil Case No. 4478 filed on 27 March 1978 a motion to adopt the testimonies of witnesses taken during the hearing of Criminal Case No. 3751, which private respondents opposed and which the court denied.[9] Petitioners subsequently moved to reconsider the order denying the motion for consolidation,[10] which Judge Capulong granted in the Order of 5 September 1978; he then directed that Civil Case No. 4478 be consolidated with Civil Case No. 4477 in Branch III of the court then presided over by Judge Mario Castañeda, Jr.

Left then with Branch V of the trial court was Criminal Case No. 3751.

In the civil cases, the plaintiffs presented as witnesses Araceli Koh McKee, Fernando Nuñag, Col. Robert Fitzgerald, Primitivo Parel, Eugenio Tanhueco, Carmen Koh and Antonio Koh,[11] and offered several documentary exhibits. Upon the other hand, private respondents presented as witnesses Ruben Galang, Zenaida Soliman, Jaime Tayag and Roman Dayrit.[12]

In the criminal case, the prosecution presented as witnesses Mrs. Araceli McKee, Salud Samia, Pfc. Fernando Nuñag, Dr. Ramon Panlilio, Dr. Robert Fitzgerald, Dr. Roberto Yuson, Dr. Hector Ulanday, Pfc. Benigno de Leon, Marina Bolos, Primitivo Parel, Rogelio Pineda, Benito Caraan and Eugenio Tanhueco, and offered several documentary exhibits.[13] Upon the other hand, the defense presented the accused Ruben Galang, Luciano Punzalan, Zenaida Soliman and Roman Dayrit, and offered documentary exhibits.[14]

On 1 October 1980, Judge Capulong rendered a decision against the accused Ruben Galang in the aforesaid criminal case. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused Ruben Galang guilty beyond reasonable doubt of the crime charged in the information and after applying the provisions of Article 365 of the Revised Penal Code and indeterminate sentence law, this Court, imposes upon said accused Ruben Galang the penalty of six (6) months of arresto mayor as minimum to two (2) years, four (4) months and one (1) day of prision correccional as maximum; the accused is further sentenced to pay and indemnify the heirs of Loida Bondoc the amount of P12,000.00 as indemnity for her death; to reimburse the heirs of Loida Bondoc the amount of P2,000.00 representing the funeral expenses; to pay the heirs of Loida Bondoc the amount of P20,000.00 representing her loss of income; to indemnify and pay the heirs of the deceased Jose Koh the value of the car in the amount of P53,910.95, and to pay the costs." [15]

The aforesaid decision was promulgated only on 17 November 1980; on the same day, counsel for petitioners

filed with Branch III of the court -- where the two (2) civil cases were pending -- a manifestation to that effect and attached thereto a copy of the decision.[16]

Upon the other hand, Judge Mario Castañeda, Jr. dismissed the two (2) civil cases on 12 November 1980 and awarded the private respondents moral damages, exemplary damages and attorney's fees.[17] The dispositive portion of the said decision reads as follows:

"WHEREFORE, finding the preponderance of evidence to be in favor of the defendants and against the plaintiffs, these cases are hereby ordered DISMISSED with costs against the plaintiffs. The defendants had proven their counter-claim, thru evidences (sic) presented and unrebutted. Hence, they are hereby awarded moral and exemplary damages in the amount of P100,000.00 plus attorney's fee of P15,000.00 and litigation expenses for (sic) P2,000.00. The actual damages claimed for (sic) by the defendants is (sic) hereby dismissed for lack of proof to that effect (sic)."[18]

A copy of the decision was sent by registered mail to the petitioners on 28 November 1980 and was received on 2 December 1980.[19]

Accused Ruben Galang appealed the judgment of conviction to the Court of Appeals. The appeal was docketed as C.A.-G.R. Blg. 24764-CR and was assigned to the court's Third Division. Plaintiffs in Civil Cases Nos. 4477 and 4478 likewise separately appealed the 12 November 1980 decision to the appellate court. The appeals were docketed as C.A.-G.R. No. 69041-R and C.A.-G.R. No. 69040-R, respectively, and were assigned to the Fourth Civil Cases Division.

On 4 October 1982, the respondent Court promulgated its decision[20] in C.A.-G.R. Blg. 24764-CR affirming the conviction of Galang.[21] The dispositive portion of the decision reads:

"DAHIL DITO, ang hatol na paksa ng naritong paghahabol ay Aming pinagtitiyay sa kanyang kabuuan. Ang naghahabol pa rin ang pinagbabayad ng gugol ng paghahabol. "

A motion for reconsideration of the decision was denied by the respondent Court in its Kapasiyahan promulgated on 25 November 1982.[22] A petition for its review[23] was filed with this Court; said petition was subsequently denied. A motion for its reconsideration was denied with finality in the Resolution of 20 April 1983.[24]

On 29 November 1983, respondent Court, by then known as the Intermediate Appellate Court, promulgated its consolidated decision in A.C.-G.R. CV Nos. 69040 and 69041,[25] the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby reversed and set aside and another one is rendered, ordering defendants-appellees to pay plaintiffs-appellants as follows:

For the death of Jose Koh:

P50,000.00 as moral damages

P12,000.00 as death indemnity

P16,000.00 for the lot and tomb (Exhs. U and U-1)

P4,000.00 expenses for holding a wake (p. 9, tsn April 19, 1979)

P950.00 for the casket (Exh. M)

P375.00 for the vault services (Exhs. V and V-1)

For the death of Kim Koh McKee:

P50,000.00 as moral damages

P12,000.00 as death indemnity

P1,000.00 for the purchase of the burial lot (Exh. M)

P950.00 for funeral services (Exh. M-1)

P375.00 for vault services (Exhs. V and V-1)

For the physical injuries suffered by George Koh McKee:

P25,000.00 as moral damages

P672.00 for Clark Field Hospital (Exh. E)

P4,384.00 paid to Angeles Medical Clinic (Exhs. D, D--1 and D-2)

P1,555.00 paid to St. Francis Medical Center (Exhs. B and B-1)

For the physical injuries suffered by Araceli Koh McKee:

P25,000.00 as moral damages

P1,055.00 paid to St. Francis Medical Center (Exhs. G and G-1)

P75.00 paid to St. Francis Medical Center (Exhs. G-2 and G-3)

P428.00 to Carmelite General Hospital (Exh. F)

P114.20 to Muñoz Clinic (Exh. MM)

For the physical injuries suffered by Christopher Koh McKee:

P10,000.00 as moral damages

P1,231.10 to St. Francis Medical Center (Exhs. L and L-1)

P321.95 to F.C.E.A. Hospital (Exhs. G and D-1)

In addition, We award P10,000.00 as counsel (sic) fees in Civil Case No. 4477 and another P10,000.00 as counsel (sic) fees in Civil Case No. 4478.

No pronouncement as to costs.

SO ORDERED."[26]

The decision is anchored principally on the respondent Court's findings that it was Ruben Galang's inattentiveness or reckless imprudence which caused the accident. The appellate court further said that the law presumes negligence on the part of the defendants (private respondents), as employers of Galang, in the selection and supervision of the latter; it was further asserted that these defendants did not allege in their Answers the defense of having exercised the diligence of a good father of a family in selecting and supervising the said employee.[27] This conclusion of reckless imprudence is based on the following findings of fact:

"In the face of these diametrically opposed judicial positions, the determinative issue in this appeal is posited in the fourth assigned error as follows:

‘IV

THE TRIAL COURT ERRED WHEN IT HELD THE (sic) DRIVER OF THE TRUCK STOPPED HIS TRUCK BLEW HIS HORN SWITCHED ON HIS HEADLIGHTS AND COULD NOT SWERVE TO THE RIGHT.’

Supportive of plaintiffs' version, principal witness Araceli Koh McKee testified thus:

'Q. What happened after that, as you approached the bridge?

A. When we were approaching the bridge, two (2) boys tried to cross the right lane on the right side of the highway going to San Fernando. My father, who is (sic) the driver of the car tried to avoid the two (2) boys who were crossing, he blew his horn and swerved to the left to avoid hitting the two (2) boys. We noticed the truck, he switched on the headlights to warn the truck driver, to slow down to give us the right of way to come back to our right lane.

Q. Did the truck slow down?

A. No, sir, it did not, just (sic) continued on its way.

Q. What happened after that?

A. After avoiding the two (2) boys, the car tried to go back to the right lane since the truck is (sic) coming, my father stepped on the brakes and all what (sic) I heard is the sound of impact (sic), sir.' (tsn, pp. 5-6, July 22, 1977); or (Exhibit 'O' in these Civil Cases).

x x x

Q: Mrs. how did you know that the truck driven by the herein accused, Ruben Galang did not reduce its speed before the actual impact of collision (sic) as you narrated in this Exhibit '1', how did you know (sic)?

A. 'It just kept on coming, sir. If only he reduced his speed, we could have got (sic) back to our right lane on side (sic) of the highway, sir.' (tsn. pp. 33-34, July 22, 1977) or (Exhibit 'O' in these Civil Cases)' (pp. 30--31, Appellants' Brief).

Plaintiffs' version was successfully corroborated to Our satisfaction by the following facts and circumstances:

1. An impartial eye-witness to the mishap, Eugenio Tanhueco, declared that the truck stopped only when it had already collided with the car:

x x x

Tanhueco repeated the same testimony during the hearing in the criminal case:

x x x

Tanhueco could (sic) not be tagged as an accommodation witness because he was one of the first to arrive at the scene of the accident. As a matter of fact, he brought one of the injured passengers to the hospital.

We are not prepared to accord faith and credit to defendants' witnesses, Zenaiada Soliman, a passenger of the truck, and Roman Dayrit, who supposedly lived across the street.

Regarding Soliman, experience has shown that in the ordinary course of events people usually take the side of the person with whom they are associated at the time of the accident, because, as a general rule, they do not wish to be identified with the person who was at fault. Thus an imaginary bond is unconsciously created among the several persons within the same group (People vs. Vivencio, CA-G.R. No. 00310-CR, Jan. 31, 1962).

With respect to Dayrit, We can not help suspecting (sic) that he is an accommodation witness. He did not go to the succor of the injured persons. He said he wanted to call the police authorities about the mishap, but his phone had no dial tone. Be this (sic) as it may, the trial court in the criminal case acted correctly in refusing to believe Dayrit.

2. Exhibit 2, the statement of Galang, does not include the claim that Galang stopped his truck at a safe distance from the car, according to plaintiffs (p. 25, Appellants' Brief). This contention of appellants was completely passed sub-silencio or was not refuted by appellees in their brief. Exhibit 2 is one of the exhibits not included in the record. According to the Table of Contents submitted by the court below, said Exhibit 2 was not submitted by defendants-appellees. In this light, it is not far-fetched to surmise that Galang's claim that he stopped was an eleventh-hour desperate attempt to exculpate himself from imprisonment and damages.

3. Galang divulged that he stopped after seeing the car about 10 meters away:

'ATTY. SOTTO:

Q. Do I understand from your testimony that inspite of the fact that you admitted that the road is straight and you may be able to (sic) see 500-1000 meters away from you any vehicle, you first saw that car only about ten (10) meters away from you for the first time?

x x x

A. I noticed it, sir, that it was about ten (10) meters away.

ATTY. SOTTO:

Q. So, for clarification, you clarify and state under your oath that you have (sic) not noticed it before that ten (10) meters? (Tsn, 3 to 5, Sept. 18, 1979).' (p. 16, Appellants' Brief)

Galang's testimony substantiate (sic) Tanhueco's statement that Galang stopped only because of the impact. At ten (10) meters away, with the truck running at 30 miles per hour, as revealed in Galang's affidavit (Exh. 2; p. 25, Appellants' Brief), it is well-nigh impossible to avoid a collision on a bridge.

5. Galang's truck stopped because of the collision, and not because he waited for Jose Koh to return to his proper lane. The police investigator, Pfc. Fernando L. Nunag, stated that he found skid marks under the truck but there were not (sic) skid marks behind the truck (pp. 19-20, t.s.n., Nov. 3, 1978). The presence of skid marks show (sic) that the truck was speeding. Since the skid marks were found under the truck and none were found at the rear of the truck, the reasonable conclusion is that the skid marks under the truck were caused by the truck's front wheels when the trucks (sic) suddenly stopped seconds before the mishap in an endeavor to avoid the same. But, as aforesaid, Galang saw the car at barely 10 meters away, a very short distance to avoid a collision, and in his futile endeavor to avoid the collision he abruptly stepped on his brakes but the smashup happened just the same.

For the inattentiveness or reckless imprudence of Galang, the law presumes negligence on the part of the defendants in the selection of their driver or in the supervision over him. Appellees did not allege such defense of having exercised the duties of a good father of a family in the selection and supervision of their employees in their answers. They did not even adduce evidence that they did in fact have methods of selection and programs of supervision. The inattentiveness or negligence of Galang was the proximate cause of the mishap. If Galang's attention was on the highway, he would have sighted the car earlier or at a very safe distance than (sic) 10 meters. He proceeded to cross the bridge, and tried to stop when a collision was already inevitable, because at the time that he entered the bridge his attention was not riveted to the road in front of him.

On the question of damages, the claims of appellants were amply proven, but the items must be reduced.”[28]

A motion for reconsideration alleging improper appreciation of the facts was subsequently filed by private

respondents on the basis of which the respondent Court, in its Resolution of 3 April 1984[29], reconsidered and set aside its 29 November 1983 decision and affirmed in toto the trial court's judgment of 12 November 1980. A motion to reconsider this Resolution was denied by the respondent Court on 4 July 1984.[30]

Hence, this petition.

Petitioners allege that respondent Court:

"I

x x x COMMITTED A VERY SERIOUS AND GRAVE ERROR WHEN IT TOTALLY REVERSED ITS DECISION BY MERELY BASING IT FROM (sic) A MERE 'PRESUMPTION,' TOTALLY DISREGARDING THE PRIVATE RESPONDENTS' DRIVER'S ADMISSIONS AND CONFESSIONS, WHO EXCLUSIVELY COMMITTED THE PROXIMATE CAUSE OF THE ACCIDENT (sic), FURTHER, IT ALSO DISREGARDED THE EVIDENCE ADDUCED AND FOUND IN THE RECORDS; THEREFORE, RESPONDENT COURT'S RESOLUTIONS (ANNEXES A and B, PETITION) ARE CLEARLY ERRONEOUS, PURELY BASED ON SPECULATIONS, CONJECTURES AND WITHOUT SURE FOUNDATION IN THE EVIDENCE.

II

x x x GRAVELY ABUSED ITS DISCRETION AND ERRED WHEN IN EFFECT IT DISREGARDED A DOCTRINE LAID DOWN BY THIS HONORABLE COURT BY STATING AMONG OTHERS, 'IT CANNOT CATEGORICALLY ADOPT THE FINDINGS OF GUILT IN THE CRIMINAL CASE WHERE THE DRIVER OF THE TRUCK INVOLVED IN THE ACCIDENT WAS INDICTED.'

III

x x x PATENTLY COMMITTED GRAVE ABUSE OF DISCRETION AND MADE A MISLEADING PRONOUNCEMENT, WHEN IT HELD: 'IT IS THUS INCUMBENT UPON THE PLAINTIFFS-APPELLANTS (APPELLEES WRONGLY MENTIONED IN THE RESOLUTION) TO PROVE THEIR ALLEGATIONS THAT THE PROXIMATE CAUSE OF THE ACCIDENT WAS THE NEGLIGENCE OF PRIVATE RESPONDENTS' DRIVER.'

IV

x x x COMMITTED ANOTHER GRIEVOUS (sic) ERROR, COMMITTED GRAVE ABUSE OF DISCRETION AND CITED ANOTHER CASE WHICH IS CLEARLY INAPPLICABLE TO THESE CASES.

V

x x x COMMITTED A PATENT ERROR AND GRAVELY ABUSED ITS DISCRETION IN ADOPTING THE FINDINGS OF THE TRIAL COURT WHICH ARE CLEARLY ERRONEOUS AND CONTRARY TO THE EVIDENCE FOUND IN THE RECORDS, SPECIALLY THEY (sic) ARE CONTRARY TO THE ADMITTED FACTS AND JUDICIAL ADMISSIONS MADE BY THE PRIVATE RESPONDENTS' DRIVER.

VI

x x x EXCEEDED ITS JURISDICTION, COMMITTED GRAVE ABUSE OF DISCRETION AND GRAVELY ERRED WHEN IT AWARDED DAMAGES TO THE PRIVATE RESPONDENTS WHEN

SAID AWARD IS NOT SUPPORTED BY EVIDENCE, IN THE RECORDS, AND SAID AWARD IS NOT ALLOWED BY LAW AND THE CONSISTENT DECISIONS OF THIS HONORABLE COURT.

VII

x x x EXCEEDED ITS JURISDICTION, COMMITTED GRAVE ABUSE OF DISCRETION AND GRAVELY ERRED WHEN IT ERRONEOUSLY SET ASIDE ITS DECISION AWARDED DAMAGES TO PETITIONERS WHICH IS CLEARLY IN ACCORDANCE WITH THE EVIDENCE, THE LAW AND JURISPRUDENCE RELATIVE TO THE AWARD OF DAMAGES.”[31]

In the Resolution of 12 September 1984, We required private respondents to Comment on the petition.[32] After the said Comment[33] was filed, petitioners submitted a Reply[34] thereto; this Court then gave due course to the instant petitions and required petitioners to file their Brief,[35] which they accordingly complied with.

There is merit in the petition. Before We take on the main task of dissecting the arguments and counter-arguments, some observations on the procedural vicissitudes of these cases are in order.

Civil Cases Nos. 4477 and 4478, which were for the recovery of civil liability arising from a quasi-delict under Article 2176 in relation to Article 2180 of the Civil Code, were filed ahead of Criminal Case No. 3751. Civil Case No. 4478 was eventually consolidated with Civil Case No. 4477 for joint trial in Branch III of the trial court. The records do not indicate any attempt on the part of the parties, and it may therefore be reasonably concluded that none was made, to consolidate Criminal Case No. 3751 with the civil cases, or vice-versa. The parties may have then believed, and understandably so, since by then no specific provision of law or ruling of this Court expressly allowed such a consolidation, that an independent civil action, authorized under Article 33 in relation to Article 2177 of the Civil Code, such as the civil cases in this case, cannot be consolidated with the criminal case. Indeed, such consolidation could have been farthest from their minds as Article 33 itself expressly provides that the "civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." Be that as it may, there was then no legal impediment against such consolidation. Section 1, Rule 31 of the Rules of Court, which seeks to avoid a multiplicity of suits, guard against oppression and abuse, prevent delays, clear congested dockets to simplify the work of the trial court, or in short, attain justice with the least expense to the parties litigants,[36] would have easily sustained a consolidation, thereby preventing the unseemingly, if not ludicrous, spectacle of two (2) judges appreciating, according to their respective orientation, perception and perhaps even prejudice, the same facts differently, and thereafter rendering conflicting decisions. Such was what happened in this case. It should not, hopefully, happen anymore. In the recent case of *Cojuangco vs. Court of Appeals*,[37] this Court held that the present provisions of Rule 111 of the Revised Rules of Court allow a consolidation of an independent civil action for the recovery of civil liability authorized under Articles 32, 33, 34 or 2176 of the Civil Code with the criminal action subject, however, to the condition that no final judgment has been rendered in that criminal case.

Let it be stressed, however, that the judgment in Criminal Case No. 3751 finding Galang guilty of reckless imprudence, although already final by virtue of the denial by no less than this Court of his last attempt to set aside the respondent Court's affirmance of the verdict of conviction, has no relevance or importance to this case.

As We held in *Dionisio vs. Alvendia*,[38] the responsibility arising from fault or negligence in a quasi-delict is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. And, as more concretely stated in the concurring opinion of Justice J.B.L. Reyes, "in the case of independent civil actions under the new Civil Code, the result of the criminal case, whether acquittal or conviction, would be entirely irrelevant to the civil action." [39] In *Salta vs. De Veyra* and *PNB vs. Purisima*,[40] this Court stated:

"x x x It seems perfectly reasonable to conclude that the civil actions mentioned in Article 33, permitted in the

same manner to be filed separately from the criminal case, may proceed similarly regardless of the result of the criminal case.

Indeed, when the law has allowed a civil case related to a criminal case, to be filed separately and to proceed independently even during the pendency of the latter case, the intention is patent to make the court's disposition of the criminal case of no effect whatsoever on the separate civil case. This must be so because the offenses specified in Article 33 are of such a nature, unlike other offenses not mentioned, that they may be made the subject of a separate civil action because of the distinct separability of their respective juridical cause or basis of action x x x."

What remains to be the most important consideration as to why the decision in the criminal case should not be considered in this appeal is the fact that private respondents were not parties therein. It would have been entirely different if the petitioners' cause of action was for damages arising from a delict, in which case private respondents' liability could only be subsidiary pursuant to Article 103 of the Revised Penal Code. In the absence of any collusion, the judgment of conviction in the criminal case against Galang would have been conclusive in the civil cases for the subsidiary liability of the private respondents.[41]

And now to the merits of the petition.

It is readily apparent from the pleadings that the principal issue raised in this petition is whether or not respondent Court's findings in its challenged resolution are supported by evidence or are based on mere speculations, conjectures and presumptions.

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by certiorari under Rule 45 of the Revised Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court.[42]

The foregoing rule, however, is not without exceptions. Findings of facts of the trial courts and the Court of Appeals may be set aside when such findings are not supported by the evidence or when the trial court failed to consider the material facts which would have led to a conclusion different from what was stated in its judgment.[43] The same is true where the appellate court's conclusions are grounded entirely on conjectures, speculations and surmises[44] or where the conclusions of the lower courts are based on a misapprehension of facts.[45]

It is at once obvious to this Court that the instant case qualifies as one of the aforementioned exceptions as the findings and conclusions of the trial court and the respondent Court in its challenged resolution are not supported by the evidence, are based on a misapprehension of facts and the inferences made therefrom are manifestly mistaken. The respondent Court's decision of 29 November 1983 makes the correct findings of fact.

In the assailed resolution, the respondent Court held that the fact that the car improperly invaded the lane of the truck and that the collision occurred in said lane gave rise to the presumption that the driver of the car, Jose Koh, was negligent. On the basis of this presumed negligence, the appellate court immediately concluded that it was Jose Koh's negligence that was the immediate and proximate cause of the collision. This is an unwarranted deduction as the evidence for the petitioners convincingly shows that the car swerved into the truck's lane because as it approached the southern end of the bridge, two (2) boys darted across the road from the right sidewalk into the lane of the car. As testified to by petitioner Araceli Koh McKee:

"Q. What happened after that, as you approached the bridge?

A. When we were approaching the bridge, two (2) boys tried to cross the right lane on the right side of the

highway going to San Fernando. My father, who is (sic) the driver of the car tried to avoid the two (2) boys who were crossing, he blew his horn and swerved to the left to avoid hitting the two (2) boys. We noticed the truck, he switched on the headlights to warn the truck driver, to slow down to give us the right of way to come back to our right lane.

Q. Did the truck slow down?

A. No, sir, it did not, just (sic) continued on its way.

Q. What happened after that?

A. After avoiding the two (2) boys, the car tried to go back to the right lane since the truck is (sic) coming, my father stepped on the brakes and all what (sic) I heard is the sound of impact (sic), sir."[46]

Her credibility and testimony remained intact even during cross examination. Jose Koh's entry into the lane of the truck was necessary in order to avoid what was, in his mind at that time, a greater peril -- death or injury to the two (2) boys. Such act can hardly be classified as negligent.

Negligence was defined and described by this Court in *Layugan vs. Intermediate Appellate Court*,[47] thus:

"x x x Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do (Black's Law Dictionary, Fifth Edition, 930), or as Judge Cooley defines it, '(T)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.' (Cooley on Torts, Fourth Edition, vol. 3, 265)

In *Picart vs. Smith* (37 Phil 809, 813), decided more than seventy years ago but still a sound rule, (W)e held:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that (reasonable care and caution which an ordinarily prudent person would have used in the same situation?) If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. x x x"

In *Corliss vs. Manila Railroad Company*,[48]We held:

"x x x 'Negligence is want of the care required by the circumstances. It is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require. Where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances. (citing *Ahern v. Oregon Telephone Co.*, 35 Pac. 549 (1894))."

On the basis of the foregoing definition, the test of negligence and the facts obtaining in this case, it is manifest that no negligence could be imputed to Jose Koh. Any reasonable and ordinary prudent man would have tried to avoid running over the two boys by swerving the car away from where they were even if this would mean entering the opposite lane. Avoiding such immediate peril would be the natural course to take particularly where the vehicle in the opposite lane would be several meters away and could very well slow down, move to the side of the road and give way to the oncoming car. Moreover, under what is known as the emergency rule, "one who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."[49]

Considering the sudden intrusion of the two (2) boys into the lane of the car, We find that Jose Koh adopted the best means possible in the given situation to avoid hitting them. Applying the above test, therefore, it is clear that he was not guilty of negligence.

In any case, assuming, arguendo that Jose Koh is negligent, it cannot be said that his negligence was the proximate cause of the collision. Proximate cause has been defined as:

"x x x 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.' And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom." [50]

Applying the above definition, although it may be said that the act of Jose Koh, if at all negligent, was the initial act in the chain of events, it cannot be said that the same caused the eventual injuries and deaths because of the occurrence of a sufficient intervening event, the negligent act of the truck driver, which was the actual cause of the tragedy. The entry of the car into the lane of the truck would not have resulted in the collision had the latter heeded the emergency signals given by the former to slow down and give the car an opportunity to go back into its proper lane. Instead of slowing down and swerving to the far right of the road, which was the proper precautionary measure under the given circumstances, the truck driver continued at full speed towards the car. The truck driver's negligence becomes more apparent in view of the fact that the road is 7.50 meters wide while the car measures 1.598 meters and the truck, 2.286 meters, in width. This would mean that both car and truck could pass side by side with a clearance of 3.661 meters to spare. [51] Furthermore, the bridge has a level sidewalk which could have partially accommodated the truck. Any reasonable man finding himself in the given situation would have tried to avoid the car instead of meeting it head-on.

The truck driver's negligence is apparent in the records. He himself said that his truck was running at 30 miles (48 kilometers) per hour along the bridge while the maximum speed allowed by law on a bridge [52] is only 30 kilometers per hour. Under Article 2185 of the Civil Code, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation. We cannot give credence to private respondents' claim that there was an error in the translation by the investigating officer of the truck driver's response in Pampango as to whether the speed cited was in kilometers per hour or miles per hour. The law presumes that official duty has been regularly performed; [53] unless there is proof to the contrary, this presumption holds. In the instant case, private respondents' claim is based on mere conjecture.

The truck driver's negligence was likewise duly established through the earlier quoted testimony of petitioner Araceli Koh McKee which was duly corroborated by the testimony of Eugenio Tanhueco, an impartial eyewitness to the mishap.

Araceli Koh McKee testified further, thus:

x x x

"Q. Mrs. how did you know that the truck driven by the herein accused, Ruben Galang did not reduce its speed before the actual impact of collision as you narrated in this Exhibit '1', how did you know?

A. It just kept on coming, sir. If only he reduced his speed, we could have got (sic) back to our right lane on side (sic) of the highway, sir. (tsn, pp. 33-34, July 22, 1977) or (Exhibit 'O' in these Civil Cases) (pp. 30-31,

Appellants' Brief)"[54]

while Eugenio Tanhueco testified thus:

"Q. When you saw the truck, how was it moving?

A. It was moving 50 to 60 kilometers per hour, sir.

Q. Immediately after you saw this truck, do you know what happened?

A. I saw the truck and a car collided (sic) sir, and I went to the place to help the victims.' (tsn. 28, April 19, 1979)

x x x.

Q. From the time you saw the truck to the time of the impact, will you tell us if the said truck ever stopped?

A. I saw it stopped (sic) when it has (sic) already collided with the car and it was already motionless.' (tsn. 31, April 19, 1979; Underlining supplied). (p. 27, Appellants' Brief)."[55]

Clearly, therefore, it was the truck driver's subsequent negligence in failing to take the proper measures and degree of care necessary to avoid the collision which was the proximate cause of the resulting accident.

Even if Jose Koh was indeed negligent, the doctrine of last clear chance finds application here. Last clear chance is a doctrine in the law of torts which states that the contributory negligence of the party injured will not defeat the claim for damages if it is shown that the defendant might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party. In such cases, the person who had the last clear chance to avoid the mishap is considered in law solely responsible for the consequences thereof.[56]

In *Bustamante vs. Court of Appeals*,[57] We held:

"The respondent court adopted the doctrine of 'last clear chance.' The doctrine, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. In other words, the doctrine of last clear chance means that even though a person's own acts may have placed him in a position of peril, and an injury results, the injured person is entitled to recovery (sic). As the doctrine is usually stated, a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or that of a third person imputed to the opponent is considered in law solely responsible for the consequences of the accident. (Sangco, *Torts and Damages*, 4th Ed., 1986, p. 165).

The practical import of the doctrine is that a negligent defendant is held liable to a negligent plaintiff, or even to a plaintiff who has been grossly negligent in placing himself in peril, if he, aware of the plaintiff's peril, or according to some authorities, should have been aware of it in the reasonable exercise of due care, had in fact an opportunity later than that of the plaintiff to avoid an accident (57 Am. Jur., 2d, pp. 798-799)."

In *Pantranco North Express, Inc., vs. Baesa*,[58] We ruled:

"The doctrine of last clear chance was defined by this Court in the case of *Ong v. Metropolitan Water District*, 104 Phil. 397 (1958), in this wise:

The doctrine of the last clear chance simply, means that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence.

The doctrine applies only in a situation where the plaintiff was guilty of prior or antecedent negligence but the

defendant, who had the last fair chance to avoid the impending harm and failed to do so, is made liable for all the consequences of the accident notwithstanding the prior negligence of the plaintiff [Picart v Smith, 37 Phil. 809 (1918); Glan People's Lumber and Hardware, et al. v. Intermediate Appellate Court, Cecilia Alferez Vda. de Calibo, et al., G.R. No. 70493, May 18, 1989]. The subsequent negligence of the defendant in failing to exercise ordinary care to avoid injury to plaintiff becomes the immediate or proximate cause of the accident which intervenes between the accident and the more remote negligence of the plaintiff, thus making the defendant liable to the plaintiff [Picart v. Smith, supra].

Generally, the last clear chance doctrine is invoked for the purpose of making a defendant liable to a plaintiff who was guilty of prior or antecedent negligence, although it may also be raised as a defense to defeat claim (sic) for damages."

Applying the foregoing doctrine, it is not difficult to rule, as We now rule, that it was the truck driver's negligence in failing to exert ordinary care to avoid the collision which was, in law, the proximate cause of the collision. As employers of the truck driver, the private respondents are, under Article 2180 of the Civil Code, directly and primarily liable for the resulting damages. The presumption that they are negligent flows from the negligence of their employee. That presumption, however, is only *juris tantum*, not *juris et de jure*.^[59] Their only possible defense is that they exercised all the diligence of a good father of a family to prevent the damage. Article 2180 reads as follows:

"The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x

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.

x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

The diligence of a good father referred to means the diligence in the selection and supervision of employees.^[60] The answers of the private respondents in Civil Cases Nos. 4477 and 4478 did not interpose this defense. Neither did they attempt to prove it.

The respondent Court was then correct in its Decision of 29 November 1983 in reversing the decision of the trial court which dismissed Civil Cases Nos. 4477 and 4478. Its assailed Resolution of 3 April 1984 finds no sufficient legal and factual moorings.

In the light of recent decisions of this Court,^[61] the indemnity for death must, however, be increased from P12,000.00 to P50,000.00.

WHEREFORE, the instant petition is GRANTED. The assailed Resolution of the respondent Court of 3 April 1984 is SET ASIDE while its Decision of 29 November 1983 in C.A.-G.R. CV Nos. 69040-41 is REINSTATED, subject to the modification that the indemnity for death is increased from P12,000.00 to P50,000.00 each for the death of Jose Koh and Kim Koh McKee.

Costs against private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, and Romero, JJ., concur.

Bidin, J., no part; participated in the appealed decision.

[1] Exhibit "S".

[2] In the sketch plan prepared by Geodetic Engr. Benito J. Caraan [Exhibit "Y"], the bridge is estimated to be 42.15 meters in length and 7.5 meters in width.

[3] Record on Appeal, 220.

[4] Id., 16-18.

[5] Record on Appeal, 121-124.

[6] Id., 226-227.

[7] Id., 22-25; 26-28; 28-32; 34-36.

[8] Id., 39-43.

[9] Record on Appeal, 45-48; 49-52; 52-53.

[10] Id. 53-57.

[11] Id., 91, 92, 100, 101, 103, 104 and 105.

[12] Record on Appeal, 107, 109, 111 and 112.

[13] Id., 124, et seq.

[14] Id., 138, et. seq.

[15] Id., 160-161.

[16] Record on Appeal, 120-121.

[17] Id., 86-120.

[18] Id., 119-120.

[19] Id., 6.

[20] Per Associate Justice Onofre A. Villaluz, concurred in by Associate Justices Crisolito Pascual and Guillermo P. Villasor.

[21] Annex "C" of Petition; Rollo, 69-77.

[22] Annex "C-1", Id.; Id., 78.

[23] G.R. No. 62713.

[24] Annex "D", Petition, op. cit.; Rollo, op. cit., 79.

[25] Per Associate Justice Porfirio V. Sison, concurred in by Associate Justices Abdulwahid A. Bidin, Marcelino R. Veloso and Desiderio P. Jurado.

[26] Rollo, 88-89.

[27] Id., 88.

[28] Rollo, 83-88.

[29] Rollo, 61-65.

[30] Id., 67.

[31] Rollo, 213-214.

[32] Rollo, 150.

[33] Id., 157-175.

[34] Id., 185-198.

[35] Id., 199.

[36] Caños vs. Peralta, 115 SCRA 843 [1982], citing 1 C.J.S. 1342-1343.

[37] 203 SCRA 619 [1991].

[38] 102 Phil. 443 [1957].

[39] At page 447.

[40] 117 SCRA 212, 218-219 [1982]; see also Castillo vs. Court of Appeals, 176 SCRA 591 [1989]; Andamo vs. Intermediate Appellate Court, 191 SCRA 195 [1990].

[41] Martinez vs. Barredo, 81 Phil. 1 [1948]; Miranda vs. Malate Garage and Taxicab, Inc., 99 Phil. 670 [1956]; Manalo vs. Robles Transportation Co., Inc., 99 Phil. 729 [1956].

[42] FNCB Finance vs. Estavillo, 192 SCRA 514 [1990]; Reñeses vs. Intermediate Appellate Court, 187 SCRA 397 [1990]; Remalante vs. Tibe, 158 SCRA 138 [1988].

[43] Capco vs. Macasaet, 189 SCRA 561 [1990].

[44] Orcino vs. Civil Service Commission, 190 SCRA 815 [1990]; Tupue vs. Urgel, 161 SCRA 417 [1988]; Tolentino vs. De Jesus, 56 SCRA 167 [1974].

[45] Pajunar vs. Court of Appeals, 175 SCRA 464 [1989]; Sese vs. Intermediate Appellate Court, 152 SCRA 585 [1987].

[46] TSN, 22 July 1977, 5-6; Exhibit "O", Rollo, 83.

[47] 167 SCRA 363 [1988].

[48] 27 SCRA 674 [1969].

[49] Gan vs. Court of Appeals, 165 SCRA 378 [1988], citing Siegl vs. Watson, 195 NW 867 and others.

[50] Vda. de Bataclan vs. Medina, 102 Phil. 181 [1957], citing 38 Am. Jur. 695-696.

[51] Rollo, 148.

[52] Section 53, Motor Vehicle Law.

[53] Section 2 (m), Rule 131, Revised Rules of Court.

[54] Rollo, 83-84.

[55] Id., 84.

[56] Ong vs. Metropolitan Water District, 104 Phil. 405 [1958]; Del Prado vs. Manila Electric Co., 52 Phil. 900 [1929]; Picart vs. Smith, 37 Phil. 809 [1918].

[57] 193 SCRA 603 [1991].

[58] 179 SCRA 384 [1989].

[59] Ramos vs. Pepsi-Cola Bottling Co., 19 SCRA 289 [1967], citing Bahia vs. Litonjua, 30 Phil. 624 [1915].

[60] Ramos vs. Pepsi-Cola Bottling Co., supra.

[61] People vs. Sison, 189 SCRA 643 [1989]; People vs. Narit, 197 SCRA 334 [1991]; People vs. Tiozon, 198 SCRA 368 [1991]; People vs. Lubreo, 200 SCRA 11 [1991]; Dangwa Trans. Co., Inc. vs. Court of Appeals, 202 SCRA 574 [1991].

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