

GLAN PEOPLE'S LUMBER AND HARDWARE, GEORGE LIM, FABIO S. AGAD, FELIX LIM AND PAUL ZACARIAS Y INFANTE, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, CECILIA ALFEREZ VDA. DE CALIB...*G.R. No. 70493. May 18, 1989*

Ponente: NARVASA, J.

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There is a two-fold message in this judgment that bears stating at the outset. The first, an obvious one, is that it is the objective facts established by proofs presented in a controversy that determine the verdict, not the plight of the persons involved, no matter how deserving of sympathy and commiseration because, for example, an accident of which they are the innocent victims has brought them to reduced circumstances or otherwise tragically altered their lives. The second is that the doctrine laid down many, many years ago in *Picart vs. Smith*,^[1] continues to be good law to this day.

The facts giving rise to the controversy at bar are tersely and quite accurately recounted by the Trial Court as follows:^[2]

"Engineer Orlando T. Calibo, Agripino Roranes, and Maximo Patos were on the jeep owned by the Bacnotan Consolidated Industries, Inc., with Calibo at the wheel, as it approached from the South Lizada Bridge going towards the direction of Davao City at about 1:45 in the afternoon of July 4, 1979. At about that time, the cargo truck, loaded with cement bags, GI sheets, plywood, driven by defendant Paul Zacarias y Infante, coming from the opposite direction of Davao City and bound for Glan, South Cotabato, had just crossed said bridge. At about 59 yards after crossing the bridge, the cargo truck and the jeep collided as a consequence of which Engineer Calibo died while Roranes and Patos sustained physical injuries. Zacarias was unhurt. As a result of the impact, the left side of the truck was slightly damaged while the left side of the jeep, including its fender and hood, was extensively damaged. After the impact, the jeep fell and rested on its right side on the asphalted road a few meters to the rear of the truck, while the truck stopped on its wheels on the road.

On November 27, 1979, the instant case for damages was filed by the surviving spouse and children of the late Engineer Calibo who are residents of Tagbilaran City against the driver and owners of the cargo truck.

For failure to file its answer to the third party complaint, third party defendant, which insured the cargo truck involved, was declared in default."

The case filed by the heirs of Engineer Calibo -- his widow and minor children, private respondents herein -- was docketed as Civil Case No. 3283 of the Court of First Instance of Bohol.^[3] Named defendants in the complaint were "Felix S. Agad, George Lim and Felix Lim ** (who) appear to be the co-owners of the Glan People's Lumber and Hardware ** (and) Paul Zacarias y Infante."^[4] The defendants' answer however alleged that the lumber and hardware business was exclusively owned by George Y. Lim, this being evidenced by the Certificate of Registration issued by the Bureau of Domestic Trade; Fabio S. Agad was not a co-owner thereof but "merely

employed by ** George Y. Lim as bookkeeper"; and Felix Lim had no connection whatever with said business, "he being a child only eight (8) years of age." [5]

"After (trial, and) a careful evaluation of the evidence, both testimonial and documentary," the Court reached the conclusion "that the plaintiffs failed to establish by preponderance of evidence the negligence, and thus the liability, of the defendants." Accordingly, the Court dismissed the complaint (and defendants' counterclaim) "for insufficiency of evidence." Likewise dismissed was third-party complaint presented by the defendants against the insurer of the truck. The circumstances leading to the Court's conclusion just mentioned, are detailed in the Court's decision, as follows:

1. Moments before its collision with the truck being operated by Zacarias, the jeep of the deceased Calibo was "zigzagging." [6]
2. Unlike Zacarias who readily submitted himself to investigation by the police, Calibo's companions, Roranes (an accountant), and Patos, who suffered injuries on account of the collision, refused to be so investigated or give statements to the police officers. This, plus Roranes' waiver of the right to institute criminal proceedings against Zacarias', and the fact that indeed no criminal case was ever instituted in Court against Zacarias, were "telling indications that they did not attribute the happening to defendant Zacarias' negligence or fault." [7]
3. Roranes' testimony, given in plaintiffs' behalf, was "not as clear and detailed as that of ** Zacarias," and was "uncertain and even contradicted by the physical facts and the police investigators Dimaano and Esparcia." [8]
4. That there were skid marks left by the truck's tires at the scene, and none by the jeep, demonstrates that the driver of the truck had applied the brakes and the jeep's driver had not; and that the jeep had on impact fallen on its right side is indication that it was running at high speed. Under the circumstances, according to the Court, given "the curvature of the road and the descending grade of the jeep's lane, it was negligence on the part of the driver of the jeep, Engr. Calibo, for not reducing his speed upon sight of the truck and failing to apply the brakes as he got within collision range with the truck."
5. Even if it be considered that there was some antecedent negligence on the part of Zacarias shortly before the collision, in that he had caused his truck to run some 25 centimeters to the left of the center of the road, Engr. Calibo had the last clear chance of avoiding the accident because he still had ample room in his own lane to steer clear of the truck, or he could simply have braked to a full stop.

The Court of Appeals saw things differently. It rendered judgment [9] on the plaintiffs' appeal, [10] reversing the decision of the Trial Court. It found Zacarias to be negligent on the basis of the following circumstances, to wit:

- 1) "the truck driven by defendant Zacarias occupied the lane of the jeep when the collision occurred," and although Zacarias saw the jeep from a distance of about 150 meters, he "did not drive his truck back to his lane in order to avoid collision with the oncoming jeep **;" [11] what is worse, "the truck driver suddenly applied his brakes even as he knew that he was still within the lane of the jeep;" [12] had both vehicles stayed in their respective lanes, the collision would never have occurred, they would have passed "alongside each other safely;" [13]
- 2) Zacarias had no license at the time; what he handed to Pfc. Esparcia, on the latter's demand, was the "driver's license of his co-driver Leonardo Baricuatro;" [14]
- 3) the waiver of the right to file criminal charges against Zacarias should not be taken against "plaintiffs" Roranes and Patos who had the right, under the law, to opt merely to bring a civil suit. [15]

The Appellate Court opined that Zacarias' negligence "gave rise to the presumption of negligence on the part of his employer, and their liability is both primary and solidary." It therefore ordered "the defendants jointly and

solidarily to indemnify the plaintiffs the following amounts:

- (1) P30,000.00 for the death of Orlando Calibo;
- (2) P378,000.00 for the loss of earning capacity of the deceased
- (3) P15,000.00 for attorney's fees;
- (4) Cost of suit."^[16]

The defendants George Lim, Felix Lim, Fabio S. Agad and Paul Zacarias have appealed to this Court on certiorari and pray for a reversal of the judgment of the Intermediate Appellate Court which, it is claimed, ignored or ran counter to the established facts. A review of the record confirms the merit of this assertion and persuades this Court that said judgment indeed disregarded facts clearly and undisputably demonstrated by the proofs. The appealed judgment, consequently, will have to be reversed.

The finding that "the truck driven by defendant Paul Zacarias occupied the lane of the jeep when the collision occurred" is a loose one, based on nothing more than the showing that at the time of the accident, the truck driven by Zacarias had edged over the painted center line of the road into the opposite lane by a width of twenty-five (25) centimeters. It ignores the fact that by the uncontradicted evidence, the actual center line of the road was not that indicated by the painted stripe but, according to measurements made and testified to by Patrolman Juanito Dimaano, one of the two officers who investigated the accident, correctly lay thirty-six (36) centimeters farther to the left of the truck's side of said stripe.

The unimpugned testimony of Patrolman Dimaano, a witness for the private respondents, is to the effect that the jeep's lane was three (3) meters and seventy-five (75) centimeters wide, and that of the truck three (3) meters and three (3) centimeters, measured from the center stripe to the corresponding side lines or outer edges of the road.^[17] The total width of the road being, therefore, six (6) meters and seventy-eight (78) centimeters, the true center line equidistant from both side lines would divide the road into two lanes each three (meters) and thirty-nine (39) centimeters wide. Thus, although it was not disputed that the truck overrode the painted stripe by twenty-five (25) centimeters, it was still at least eleven (11) centimeters away from its side of the true center line of the road and well inside its own lane when the accident occurred. By this same reckoning, since it was unquestionably the jeep that rammed into the stopped truck, it may also be deduced that it (the jeep) was at the time travelling beyond its own lane and intruding into the lane of the truck by at least the same 11-centimeter width of space.

Not only was the truck's lane, measured from the incorrectly located center stripe uncomfortably narrow, given that vehicle's width of two (2) meters and forty-six (46) centimeters; the adjacent road shoulder was also virtually impassable, being about three (3) inches lower than the paved surface of the road and "soft" -- not firm enough to offer traction for safe passage -- besides which, it sloped gradually down to a three foot-deep ravine with a river below.^[18] The truck's lane as erroneously demarcated by the center stripe gave said vehicle barely half a meter of clearance from the edge of the road and the dangerous shoulder and little room for maneuver, in case this was made necessary by traffic contingencies or road conditions, if it always kept to said lane. It being also shown that the accident happened at or near the point of the truck's approach to a curve,^[19] which called for extra precautions against driving too near the shoulder, it could hardly be accounted negligent on the part of its driver to intrude temporarily, and by only as small as a twenty-five centimeter-wide space (less than ten inches), into the opposite lane in order to insure his vehicle's safety. This, even supposing that said maneuver was in fact an intrusion into the opposite lane, which was not the case at all as just pointed out.

Nor was the Appellate Court correct in finding that Paulino Zacarias had acted negligently in applying his brakes

instead of getting back inside his lane upon espying the approaching jeep. Being well within his own lane, as has already been explained, he had no duty to swerve out of the jeep's way as said Court would have had him do. And even supposing that he was in fact partly inside the opposite lane, coming to a full stop with the jeep still thirty (30) meters away cannot be considered an unsafe or imprudent action, there also being uncontradicted evidence that the jeep was "zigzagging"[20] and hence no way of telling in which direction it would go as it approached the truck.

Also clearly erroneous is the finding of the Intermediate Appellate Court that Zacarias had no driver's license at the time. The traffic accident report attests to the proven fact that Zacarias voluntarily surrendered to the investigating officers his driver's license, valid for 1979, that had been renewed just the day before the accident, on July 3, 1979.[21] The Court was apparently misled by the circumstance that when said driver was first asked to show his license by the investigators at the scene of the collision, he had first inadvertently produced the license of a fellow driver, Leonardo Baricuatro, who had left said license in Davao City and had asked Zacarias to bring it back to him in Glan, Cotabato.[22]

The evidence not only acquits Zacarias of any negligence in the matter; there are also quite a few significant indicators that it was rather Engineer Calibo's negligence that was the proximate cause of the accident. Zacarias had told Patrolman Dimaano at the scene of the collision and later confirmed in his written statement at the police headquarters[23] that the jeep had been "zigzagging," which is to say that it was travelling or being driven erratically at the time. The other investigator, Patrolman Jose Esparcia, also testified that eyewitnesses to the accident had remarked on the jeep's "zigzagging." [24] There is moreover more than a suggestion that Calibo had been drinking shortly before the accident. The decision of the Trial Court adverts to further testimony of Esparcia to the effect that three of Calibo's companions at the beach party he was driving home from when the collision occurred, who, having left ahead of him went to the scene when they heard about the accident, had said that there had been a drinking spree at the party and, referring to Calibo, had remarked: "Sabi na huag nang mag drive pumipilit," (loosely translated, "He was advised not to drive, but he insisted.").

It was Calibo whose driver's license could not be found on his person at the scene of the accident, and was reported by his companions in the jeep as having been lost with his wallet at said scene, according to the traffic accident report, Exhibit "J". Said license unexplainedly found its way into the record some two years later.

Reference has already been made to the finding of the Trial Court that while Zacarias readily submitted to interrogation and gave a detailed statement to the police investigators immediately after the accident, Calibo's two companions in the jeep and supposed eyewitnesses, Agripino Roranes and Maximo Patos, refused to give any statements. Furthermore, Roranes who, together with Patos, had sustained injuries as a result of the collision, waived his right to file a criminal case against Zacarias.[25]

Even, however, ignoring these telltale, indicia of negligence on the part of Calibo, and assuming some antecedent negligence on the part of Zacarias in failing to keep within his designated lane, incorrectly demarcated as it was, the physical facts, either expressly found by the Intermediate Appellate Court or which may be deemed conceded for lack of any dispute, would still absolve the latter of any actionable responsibility for the accident under the rule of the last clear chance.

Both drivers, as the Appellate Court found, had had a full view of each other's vehicle from a distance of one hundred fifty meters. Both vehicles were travelling at a speed of approximately thirty kilometers per hour.[26] The private respondents have admitted that the truck was already at a full stop when the jeep plowed into it. And they have not seen fit to deny or impugn petitioners' imputation that they also admitted the truck had been brought to a stop while the jeep was still thirty meters away.[27] From these facts the logical conclusion emerges that the

driver of the jeep had what judicial doctrine has appropriately called the last clear chance to avoid the accident, while still at that distance of thirty meters from the truck, by stopping in his turn or swerving his jeep away from the truck, either of which he had sufficient time to do while running at a speed of only thirty kilometers per hour. In those circumstances, his duty was to seize that opportunity of avoidance, not merely rely on a supposed right to expect, as the Appellate Court would have it, the truck to swerve and leave him a clear path.

The doctrine of the last clear chance provides as valid and complete a defense to accident liability today as it did when invoked and applied in the 1918 case of *Picart vs. Smith*, *supra*, which involved a similar state of facts. Of those facts, which should be familiar to every student of law, it is only necessary to recall the summary made in the syllabus of this Court's decision that:

"(t)he plaintiff was riding a pony on a bridge. Seeing an automobile ahead he improperly pulled his horse over to the railing on the right. The driver of the automobile, however, guided his car toward the plaintiff without diminution of speed until he was only a few feet away. He then turned to the right but passed so closely to the horse that the latter being frightened, jumped around and was killed by the passing car. ***."

Plaintiff Picart was thrown off his horse and suffered contusions which required several days of medical attention. He sued the defendant Smith for the value of his animal, medical expenses and damage to his apparel and obtained judgment from this Court which, while finding that there was negligence on the part of both parties, held that that of the defendant was the immediate and determining cause of the accident and that of the plaintiff "**** the more remote factor in the case":

"It goes without saying that the plaintiff himself was not free from fault, for he was guilty of antecedent negligence in planting himself on the wrong side of the road. But as we have already stated, the defendant was also negligent; and in such case the problem always is to discover which agent is immediately and directly responsible. It will be noted that the negligent acts of the two parties were not contemporaneous, since the negligence of the defendant succeeded the negligence of the plaintiff by an appreciable interval. Under these circumstances the law is that the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party."

Since said ruling clearly applies to exonerate petitioner Zacarias and his employer (and co-petitioner) George Lim, an inquiry into whether or not the evidence supports the latter's additional defense of due diligence in the selection and supervision of said driver is no longer necessary and will not be undertaken. The fact is that there is such evidence in the record which has not been controverted.

It must be pointed out, however, that the Intermediate Appellate Court also seriously erred in holding the petitioners Pablo S. Agad and Felix Lim solidarily liable for the damages awarded in its appealed decision, as alleged owners, with petitioner George Lim, of Glan People's Lumber and Hardware, employer of petitioner Zacarias. This manifestly disregarded, not only the certificate of registration issued by the Bureau of Domestic Trade identifying Glan People's Lumber and Hardware as a business name registered by George Lim,[28] but also unimpugned allegations in the petitioners' answer to the complaint that Pablo S. Agad was only an employee of George Lim and that Felix Lim, then a child of only eight (8) years, was in no way connected with the business.

In conclusion, it must also be stated that there is no doubt of this Court's power to review the assailed decision of the Intermediate Appellate Court under the authority of precedents recognizing exceptions to the familiar rule binding it to observe and respect the latter's findings of fact. Many of those exceptions may be cited to support the review here undertaken, but only the most obvious -- that said findings directly conflict with those of the Trial Court -- will suffice.[29] In the opinion of this Court and after a careful review of the record, the evidence singularly fails to support the findings of the Intermediate Appellate Court which, for all that appears, seem to have been prompted rather by sympathy for the heirs of the deceased Engineer Calibo than by an objective

appraisal of the proofs and a correct application of the law to the established facts. Compassion for the plight of those whom an accident has robbed of the love and support of a husband and father is an entirely natural and understandable sentiment. It should not, however, be allowed to stand in the way of, much less to influence, a just verdict in a suit at law.

WHEREFORE, the appealed judgment of the Intermediate Appellate Court is hereby REVERSED, and the complaint against herein petitioners in Civil Case No. 3283 of the Court of First Instance of Bohol, Branch IV, is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Grino-Aquino, and Medialdea, JJ., concur.

[1] 37 Phil. 809

[2] Rollo, pp. 102-103

[3] Assigned to Branch IV, Judge Fernando S. Ruiz, presiding

[4] Rollo, p. 64

[5] Id., pp. 67-68

[6] Id., pp. 106-107. This was testified to by Zacarias and Police Officer Esparcia

[7] Id., p. 106

[8] Ibid.

[9] On December 21, 1984, the ponente being Pascual, J., with whom concurred Camilon and Jurado, JJ.

[10] AC-G.R. CV No. 00470

[11] Rollo, p. 57

[12] Id., p. 59

[13] Id., pp. 58-59

[14] Id., p. 57

[15] Id., p. 58

[16] Id., p. 60

[17] TSN, April 29, 1981, p. 36

[18] TSN July 21, 1981, pp. 15-16, 32; TSN April 29, 1981, pp. 37-38, 45

[19] Exh. "4-A"

[20] see *infra*, footnote [11]

[21] Exhibit "J"

[22] TSN Sept. 10, 1981, p.m., pp. 62-65; TSN July 22, 1981, p. 65

[23] Exhibit 15; see also TSN Sept. 9, 1981, p.m., p. 18

[24] TSN July 22, 1981, pp. 73-76

[25] *supra*, p. 3-5

[26] Rollo, p. 57

[27] Petition for Review, p. 21; Rollo, p. 26

[28] Rollo, p. 71

[29] *Remalante vs. Tibe and CA*, 158 SCRA 138; *Bunag vs. CA*, 158 SCRA 299; *Maclan vs. Santos*, 156 SCRA 542, citing *Garcia vs. CA*, 33 SCRA 622 and *Alsua-Betts vs. CA*, 92 SCRA 332; *Vallarta vs. IAC*, 151 SCRA 679; *Manlapaz vs. CA*, 147 SCRA 236

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