

**EMMA ADRIANO BUSTAMANTE, IN HER OWN BEHALF AS
GUARDIAN-AD-LITEM OF MINORS: ROSSEL, GLORIA, YOLANDA,
ERICSON AND EDERIC, ALL SURNAMED BUSTAMANTE, SPOUSES
SALVADOR JOCSON AND ATRI...**

G.R. No. 89880. February 06, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari seeking the reversal of the decision of the respondent Court of Appeals dated February 15, 1989 which reversed and set aside the decision of the Regional Trial Court of Cavite, Branch XV ordering the defendants to pay jointly and severally the plaintiffs indemnity for death and damages; and in further dismissing the complaint insofar as defendants-appellants Federico del Pilar and Edilberto Montesiano are concerned; and its resolution dated August 17, 1989 denying the motion for reconsideration for lack of merit.

The facts giving rise to the controversy at bar are recounted by the trial court as follows:

"At about 6:30 in the morning of April 20, 1983, a collision occurred between a gravel and sand truck, with Plate No. DAP 717, and a Mazda passenger bus with Motor No. Y2231 and Plate No. DVT 259 along the national road at Calibuyo, Tanza, Cavite. The front left side portion (barandilla) of the body of the truck sideswiped the left side wall of the passenger bus, ripping off the said wall from the driver's seat to the last rear seat.

"Due to the impact, several passengers of the bus were thrown out and died as a result of the injuries they sustained. Among those killed were the following:

"1. Rogelio Bustamante, 40; husband of plaintiff Emma Adriano Bustamante and father of plaintiffs Rossel, Gloria, Yolanda, Ericson, and Ederic, all surnamed Bustamante;

"2. Maria Corazon Jocson, 16, daughter of plaintiffs spouses Salvador and Patria Jocson;

"3. Jolet Ramos, 16, daughter of plaintiffs spouses Jose and Enriqueta Ramos;

"4. Enrico Himaya, 18, son of plaintiffs spouses Narciso and Adoracion Himaya; and

"5. Noel Bersamina, 17, son of plaintiffs spouses Jose and Ma. Commemoracion Bersamina." (Rollo, p. 48)

During the incident, the cargo truck was driven by defendant Montesiano and owned by defendant Del Pilar; while the passenger bus was driven by defendant Susulin. The vehicle was registered in the name of defendant Novelo but was owned and/or operated as a passenger bus jointly by defendants Magtibay and Serrado, under a franchise, with a line from Naic, Cavite, to Baclaran, Parañaque, Metro Manila, and vice-versa, which Novelo sold to Magtibay on November 8, 1981, and which the latter transferred to Serrado (Cerrado) on January 18, 1983.

Immediately before the collision, the cargo truck and the passenger bus were approaching each other, coming from the opposite directions of the highway. While the truck was still about 30 meters away, Susulin the bus driver, saw the front wheels of the vehicle wiggling. He also observed that the truck was heading towards his lane. Not minding this circumstance due to his belief that the driver of the truck was merely joking. Susulin shifted from fourth to third gear in order to give more power and speed to the bus, which was ascending the inclined part of the road, in order to overtake or pass a Kubota hand tractor being pushed by a person along the shoulder of the highway. While the bus was in the process of overtaking or passing the hand tractor and the truck was approaching the bus, the two vehicles sideswiped each other at each other's left side. After the impact, the truck skidded towards the other side of the road and landed on a nearby residential lot, hitting a coconut tree and felling it." (Rollo, pp. 48-50)

After a careful perusal of the circumstances of the case, the trial court reached the conclusion "that the negligent acts of both drivers contributed to or combined with each other in directly causing the accident which led to the death of the aforementioned persons. It could not be determined from the evidence that it was only the negligent act of one of them which was the proximate cause of the collision. In view of thus, the liability of the two drivers for their negligence must be solidary. (Rollo, pp. 50-51) Accordingly, the trial court rendered a decision on March 7, 1986, the dispositive portion is hereunder quoted as follows:

"WHEREFORE, defendants Valeriano Magtibay, Simplicio Serrado, Ricardo Susulin, Efren Novelo, Federico del Pilar and Edilberto Montesiano are hereby ordered to pay jointly and severally to the plaintiffs, as follows:

"1. To plaintiffs Emma Adriano Bustamante and her minor children, the sum of P30,000.00 as indemnity for the death of Rogelio Bustamante; U.S. \$127,680.00 as indemnity for the loss of the earning capacity of the said deceased, at its prevailing rate in pesos at the time this decision shall have become final and executory; P10,000.00 as moral damages; and P5,000.00 as exemplary damages;

"2. To plaintiffs Salvador and Patria Jocson, the sum of P30,000.00 as indemnity for the death of their daughter, Maria Corazon Jocson; P10,000.00 as moral damages; and P5,000.00 as exemplary damages;

"3. To plaintiffs Jose and Enriqueta Ramos, the sum of P30,000.00 as indemnity for the death of their daughter, Jolet Ramos; P10,000.00 as moral damages; and P5,000.00 as exemplary damages; and

"4. To plaintiffs Narciso and Adoracion Himaya, the amount of P30,000.00 as indemnity for the death of their son, Enrico Himaya; P10,000.00 as moral damages; and P5,000.00 as exemplary damages; and

"5. To plaintiffs Jose and Ma. Commemoracion Bersamina, the sum of P30,000.00 as indemnity for the death of their son; Noel Bersamina, P10,000.00 as moral damages; and P5,000.00 as exemplary damages.

"The defendants are also required to pay the plaintiffs the sum of P10,000.00 as attorney's fees and to pay the costs of the suit.

"The cross-claim of defendant Novelo hereby allowed, and defendants Magtibay and Serrado, the actual owners and/or operators of the passenger bus concerned, are hereby ordered to indemnify Novelo in such amount as he may be required to pay as damages to the plaintiffs.

"The cross-claims and counter-claims of the other defendants are hereby dismissed for lack of merit.

"SO ORDERED." (pp. 55-57, Rollo)

From said decision, only defendants Federico del Pilar and Edilberto Montesiano, owner and driver, respectively, of the sand and gravel truck have interposed an appeal before the respondent Court of Appeals. The Court of Appeals decided the appeal on a different light. It rendered judgment on February 15, 1989, to wit:

"WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE and the complaint dismissed insofar as defendants-appellants Federico del Pilar and Edilberto Montesiano are concerned. No costs in this instance.

"SO ORDERED." (p. 96, Rollo)

On March 9, 1989, the plaintiffs-appellees filed a motion for reconsideration of the aforementioned Court of Appeals' decision. However, respondent Court of Appeals in a resolution dated August 17, 1989 denied the motion for lack of merit. Hence, this petition.

Petitioners raised the following questions of law, namely:

"First. Whether the respondent Court can legally and validly absolve defendants-appellants from liability despite its own- finding, as well as that of the trial court that defendant-appellant Edilberto Montesiano, the cargo truck driver, was driving an old vehicle very fast, with its wheels already wiggling, such that he had no more control of his truck.

"Second. Whether the respondent court can validly and legally disregard the findings of fact made by the trial court which was in a better position to observe the conduct and demeanor of the witnesses, particularly appellant Edilberto Montesiano, cargo truck driver, and which conclusively found appellant Montesiano as jointly and severally negligent in driving his truck very fast and had lost control of his truck.

"Third. Whether the respondent court has properly and legally applied the doctrine of 'last clear chance' in the present case despite its own finding that appellant cargo truck driver Edilberto Montesiano was admittedly negligent in driving his cargo truck very fast on a descending road and in the presence of the bus driver coming from the opposite direction.

"Fourth. Whether the respondent court has applied the correct law and the correct doctrine so as to reverse and set aside the judgment with respect to defendants-appellants." (Rollo, pp. 133-134)

As a rule, findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal, provided, they are borne out by the record or are based on substantial evidence. However, this rule admits of certain exceptions, as when the findings of facts are conclusions without citation of specific evidence on which they are based; or the appellate court's findings are contrary to those of the trial court. (*Sese v. Intermediate Appellate Court*, G.R. 66168, 31 July 1987, 152 SCRA 585).

Furthermore, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Revised Rules of Court. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive. It is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed. Barring, therefore, a showing that the findings complained of are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand for the Supreme Court is not expected or required to examine or contrast the oral and documentary evidence submitted by the parties. (*Andres v. Manufacturers Hanover and Trust Corp.*, G.R. 82670, 15 September 1989, 177 SCRA 618).

Bearing in mind these basic principles, We have opted to re-examine the findings of fact mainly because the appellate court's findings are contrary to those of the trial court.

The trial court, in declaring that the negligent acts of both drivers directly caused the accident which led to the death of the aforementioned persons, considered the following:

"It was negligent on the part of driver Montesiano to have driven his truck fast, considering that it was an old

vehicle, being a 1947 model as admitted by its owner, defendant Del Pilar; that its front wheels were wiggling; that the road was descending; and that there was a passenger bus approaching it. Likewise, driver Susulin was also guilty of negligence in not taking the necessary precaution to avoid the collision, in the light of his admission that, at a distance of 30 meters, he already saw the front wheels of the truck wiggling and that the vehicle was usurping his lane coming towards his direction. Had he exercised ordinary prudence, he could have stopped his bus or swerved it to the side of the road even down to its shoulder. And yet, Susulin shifted to third gear so as to, as claimed by him, give more power and speed to his bus in overtaking or passing a hand tractor which was being pushed along the shoulder of the road." (Rollo, p. 50)

The respondent Court of Appeals ruling on the contrary, opined that "the bus driver had the last clear chance to avoid the collision and his reckless negligence in proceeding to overtake the hand tractor was the proximate cause of the collision." (Rollo, p. 95). Said court also noted that "the record also discloses that the bus driver was not a competent and responsible driver. His driver's license was confiscated for a traffic violation on April 17, 1983 and he was using a ticket for said traffic violation on the day of the accident in question (pp. 16-18, TSN, July 23, 1984). He also admitted that he was not a regular driver of the bus that figured in the mishap and was not given any practical examination. (pp. 11, 96, TSN, supra)." (Rollo, p. 96)

The respondent Court quoting *People v. Vender*, CA?G.R. 11114-41-CR, August 28, 1975 held that "We are not prepared to uphold the trial court's finding that the truck was running fast before the impact. The national road, from its direction, was descending. Courts can take judicial notice of the fact that a motor vehicle going down or descending is more liable to get out of control than one that is going up or ascending for the simple reason that the one which is going down gains added momentum while that which is going up loses its initial speeding in so doing."

On the other hand, the trial court found and We are convinced that the cargo truck was running fast. It did not overlook the fact that the road was descending as in fact it mentioned this circumstance as one of the factors disregarded by the cargo truck driver along with the fact that he was driving an old 1947 cargo truck whose front wheels are already wiggling and the fact that there is a passenger bus approaching it. In holding that the driver of the cargo truck was negligent, the trial court certainly took into account all these factors so it was incorrect for the respondent court to disturb the factual findings of the trial court, which is in a better position to decide the question, having heard the witnesses themselves and observed their deportment.

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. 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 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 case, had in fact an opportunity later than that of the plaintiff to avoid an accident (57 Am. Jur., 2d, pp. 798-799).

In the recent case of *Philippine Rabbit Bus Lines, Inc. v. Intermediate Appellate Court, et al.* (G.R. Nos. 66102-04, August 30, 1990), the Court citing the landmark decision held in the case of *Anuran, et al. v. Buno, et*

al. (123 Phil. 1073) ruled that the principle of "last clear chance" applies "in a suit between the owners and drivers of colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations. For it would be inequitable to exempt the negligent driver of the jeepney and its owners on the ground that the other driver was likewise guilty of negligence."

Furthermore, "as between defendants: The doctrine cannot be extended into the field of joint tortfeasors as a test of whether only one of them should be held liable to the injured person by reason of his discovery of the latter's peril, and it cannot be invoked as between defendants concurrently negligent. As against third persons, a negligent actor cannot defend by pleading that another had negligently failed to take action which could have avoided the injury." (57 Am. Jur, 2d, pp. 806-807).

All premises considered, the Court is convinced that the respondent Court committed an error of law in applying the doctrine of last clear chance as between the defendants, since the case at bar is not a suit between the owners and drivers of the colliding vehicles but a suit brought by the heirs of the deceased passengers against both owners and drivers of the colliding vehicles. Therefore, the respondent court erred in absolving the owner and driver of the cargo truck from liability.

Pursuant to the new policy of this Court to grant an increased death indemnity to the heirs of the deceased, their respective awards of P30,000.00 are hereby increased to P50,000.00.

ACCORDINGLY, the petition is GRANTED; the appealed judgment and resolution of the Court of Appeals are hereby REVERSED and SET ASIDE and the judgment of the lower court is REINSTATED with the modification on the indemnity for death of each of the victims which is hereby increased to P50,000.00 each. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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