

**SOFIA FERNANDO, IN HER BEHALF AND AS THE LEGAL GUARDIAN
OF HER MINOR CHILDREN, NAMELY: ALBERTO & ROBERTO,
ALL SURNAMED FERNANDO, ANITA GARCIA, NICOLAS LIAGOSO,
ROSALIA BERTULANO...**

G.R. No. 92087. May 08, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari praying that the amended decision of the Court of Appeals dated January 11, 1990 in CA-G.R. No. C.V. 04846, entitled "Sofia Fernando, etc., et al. v. The City of Davao," be reversed and that its original decision dated January 31, 1986 be reinstated subject to the modification sought by the petitioners in their motion for partial reconsideration dated March 6, 1986.

The antecedent facts are briefly narrated by the trial court, as follows:

"From the evidence presented we see the following facts: On November 7, 1975, Bibiano Morta, market master of the Agdao Public Market filed a requisition request with the Chief of Property of the City Treasurer's Office for the re-emptying of the septic tank in Agdao. An invitation to bid was issued to Aurelio Bertulano, Lito Catarsa, Feliciano Bascon, Federico Bolo and Antonio Suñer, Jr. Bascon won the bid. On November 26, 1975 Bascon was notified and he signed the purchase order. However, before such date, specifically on November 22, 1975, bidder Bertulano with four other companions namely Joselito Garcia, William Liagoso, Alberto Fernando and Jose Fajardo, Jr. were found dead inside the septic tank. The bodies were removed by a fireman. One body, that of Joselito Garcia, was taken out by his uncle, Danilo Garcia and taken to the Regional Hospital but he expired there. The City Engineer's office investigated the case and learned that the five victims entered the septic tank without clearance from it nor with the knowledge and consent of the market master. In fact, the septic tank was found to be almost empty and the victims were presumed to be the ones who did the re-emptying. Dr. Juan Abear of the City Health Office autopsied the bodies and in his reports, put the cause of death of all five victims as 'asphyxia' caused by the diminution of oxygen supply in the body working below normal conditions. The lungs of the five victims burst, swelled in hemorrhagic areas and this was due to their intake of toxic gas, which, in this case, was sulfide gas produced from the waste matter inside the septic tank." (p. 177, Records)

On August 28, 1984, the trial court rendered a decision, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, this case is hereby DISMISSED without pronouncement as to costs.

"SO ORDERED." (Records, p. 181)

From the said decision, the petitioners appealed to the then Intermediate Appellate Court (now Court of Appeals). On January 3, 1986, the appellate court issued a decision, the dispositive portion of which reads:

"WHEREFORE, in view of the facts fully established and in the liberal interpretation of what the Constitution and the law intended to protect the plight of the poor and the needy, the ignorant and the indigent -- more

entitled to social justice for having, in the unforgettable words of Magsaysay, 'less in life,' We hereby reverse and set aside the appealed judgment and render another one:

"1. Ordering the defendant to pay to the plaintiffs Dionisio Fernando, Sofia Fernando and her minor children the following sums of money:

a) Compensatory damages for his death..... P30,000.00

b) Moral damages P20,000.00

"2. Ordering the defendant to pay to the plaintiffs David Garcia and Anita Garcia the following sums of money:

a) Compensatory damages for his death.... P30,000.00

b) Moral damages..... P20,000.00

"3. Ordering the defendant to pay to the plaintiff Rosalia Bertulado (sic) and her minor children the following sums of money

a) Compensatory damages for his death..... P30,000.00

b) Moral damages..... . P20,000.00

"4. Ordering the defendant to pay to the plaintiff Primitiva Fajardo and her minor children the following sums of money:

a) Compensatory damages for his death..... P30,000.00

b) Moral damages..... P20,000.00

"5. Ordering the defendant to pay to the plaintiffs Norma Liagoso, Nicolas Liagoso and Emeteria Liagoso and her minor grandchildren the following sums of money:

a) Compensatory damages for his death.... . P30,000.00

b) Moral damages..... P20,000.00

The death compensation is fixed at P30,000.00 in accordance with the rulings of the Supreme Court starting with *People vs. Dela Fuente* Nos. L-63251-52, December 29, 1983, 126 SCRA 518 reiterated in the recent case of *People vs. Nepomuceno*, No. L-41412, May 27, 1985. Attorney's fees in the amount of P10,000.00 for the handling of the case for the 5 victims is also awarded.

"No pronouncement as to costs.

"SO ORDERED." (Rollo, pp. 33-34)

Both parties filed their separate motions for reconsideration. On January 11, 1990, the Court of Appeals rendered an Amended Decision, the dispositive portion of which reads:

"WHEREFORE, finding merit in the motion for reconsideration of the defendant-appellee Davao City, the same is hereby GRANTED. The decision of this Court dated January 31, 1986 is reversed and set aside and another one is hereby rendered dismissing the case. No pronouncement as to costs.

"SO ORDERED." (Rollo, p. 25)

Hence, this petition raising the following issues for resolution:

"1. Is the respondent Davao City guilty of negligence in the case at bar?

"2. If so, is such negligence the immediate and proximate cause of deaths of the victims hereof?" (p. 73, Rollo)

Negligence has been defined as the 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 (*Corliss v. Manila Railroad Company*, L-21291, March 28, 1969, 27 SCRA 674, 680). Under the law, a person who by his omission causes damage to another, there being negligence, is obliged to pay for the damage done (Article 2176; New Civil Code). As to what would constitute a negligent act in a given situation, the case of *Picart v. Smith* (37 Phil. 809, 813) provides us the answer, to wit:

"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. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

"The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this provision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences." (underlining supplied)

To be entitled to damages for an injury resulting from the negligence of another, a claimant must establish the relation between the omission and the damage. He must prove under Article 2179 of the New Civil Code that the defendant's negligence was the immediate and proximate cause of his injury. Proximate cause has been defined as 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 (*Vda. De Bataclan, et al. v. Medina*, 102 Phil 181, 186). Proof of such relation of cause and effect is not an arduous one if the claimant did not in any way contribute to the negligence of the defendant. However, where the resulting injury was the product of the negligence of both parties, there exists a difficulty to discern which acts shall be considered the proximate cause of the accident. In *Taylor v. Manila Electric Railroad and Light Co.* (16 Phil. 8, 29-30), this Court set a guideline for a judicious assessment of the situation:

"Difficulty seems to be apprehended in deciding which acts of the injured party shall be considered immediate causes of the accident. The test is simple. Distinction must be made between the accident and the injury, between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing to his own proper hurt. For instance, the cause of the accident under review was the displacement of the crosspiece or the failure to replace it. This produced the event giving occasion for damages--that is, the sinking of the track and the sliding of the iron rails. To this event, the act of the plaintiff in walking by the side of the car did not contribute, although it was an element of the damage which came to himself. Had the crosspiece been out of place wholly or partly through his act or

omission of duty, that would have been one of the determining causes of the event or accident, for which he would have been responsible. Where he contributes to the principal occurrence, as one of its determining factors, he can not recover. Where, in conjunction with the occurrence, he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less a sum deemed a suitable equivalent for his own imprudence." (underscoring Ours)

Applying all these established doctrines in the case at bar and after a careful scrutiny of the records, We find no compelling reason to grant the petition. We affirm.

Petitioners fault the city government of Davao for failing to clean a septic tank for the period of 19 years resulting in an accumulation of hydrogen sulfide gas which killed the laborers. They contend that such failure was compounded by the fact that there was no warning sign of the existing danger and no efforts exerted by the public respondent to neutralize or render harmless the effects of the toxic gas. They submit that the public respondent's gross negligence was the proximate cause of the fatal incident.

We do not subscribe to this view. While it may be true that the public respondent has been remiss in its duty to re-empty the septic tank annually, such negligence was not a continuing one. Upon learning from the report of the market master about the need to clean the septic tank of the public toilet in Agdao Public Market, the public respondent immediately responded by issuing invitations to bid for such service. Thereafter, it awarded the bid to the lowest bidder, Mr. Feliciano Bascon (TSN, May 24, 1983, pp. 22-25). The public respondent, therefore, lost no time in taking up remedial measures to meet the situation. It is likewise an undisputed fact that despite the public respondent's failure to re-empty the septic tank since 1956, people in the market have been using the public toilet for their personal necessities but have remained unscathed. The testimonies of Messrs. Danilo Garcia and David Secoja (plaintiffs'-petitioners' witnesses) on this point are relevant, to wit:

"Atty. Mojica, counsel for defendant Davao City:

x x x

The place where you live is right along the Agdao creek, is that correct?

"DANILO GARCIA:

"A Yes, sir.

"Q And to be able to go to the market place, where you claim you have a stall, you have to pass on the septic tank?

"A Yes, sir.

"Q Day in and day out, you pass on top of the septic tank?

"A Yes, sir.

"Q Is it not a fact that everybody living along the creek passes on top of this septic tank as they go out from the place and return to their place of residence, is that correct?

And this septic tank, rather the whole of the septic tank, is covered by a lead...?

"A Yes, sir. there is a cover.

"Q And there were three (3) of these lead covering the septic tank?

"A Yes, sir.

"Q And this has always been closed?

"A Yes, sir." (TSN, November 26, 1979, pp. 21-23, underscoring supplied)

"ATTY. JOVER, counsel for the plaintiffs:

"Q You said you are residing at Davao City, is it not?

"DAVID SEJOYA:

"A Yes, sir.

"Q How long have you been a resident of Agdao?

"A Since 1953.

"Q Where specifically in Agdao are you residing?

"A At the Public Market.

"Q Which part of the Agdao Public Market is your house located?

"A Inside the market in front of the fish section.

"Q Do you know where the Agdao septic tank is located?

"A Yes, sir.

"Q How far is that septic tank located from your house?

"A Around thirty (30) meters.

"Q Have you ever had a chance to use that septic tank (public toilet)?

"A Yes, sir.

"Q How many times, if you could remember?

"A Many times, maybe more than 1,000 times.

"Q Prior to November 22, 1975, have you ever used that septic tank (public toilet)?

"A Yes, sir.

"Q How many times have you gone to that septic tank (public toilet) prior to that date, November 22, 1975?

"A Almost 1,000 times." (TSN, February 9, 1983, pp. 1-2)

The absence of any accident was due to the public respondent's compliance with the sanitary and plumbing specifications in constructing the toilet and the septic tank (TSN, November 4, 1983, p. 51). Hence, the toxic gas from the waste matter could not have leaked out because the septic tank was air-tight (TSN, *ibid*, p. 49). The only indication that the septic tank in the case at bar was full and needed emptying was when water came out from it (TSN, September 13, 1983, p. 41). Yet, even when the septic tank was full, there was no report of any casualty of gas poisoning despite the presence of people living near it or passing on top of it or using the public toilet for their personal necessities.

Petitioners made a lot of fuss over the lack of any ventilation pipe in the toilet to emphasize the negligence of the city government and presented witnesses to attest on this lack. However, this strategy backfired on their faces. Their witnesses were not expert witnesses. On the other hand, Engineer Demetrio Alindada of the city government testified and demonstrated by drawings how the safety requirements like emission of gases in the

construction of both toilet and septic tank have been complied with. He stated that the ventilation pipe need not be constructed outside the building as it could also be embodied in the hollow blocks as is usually done in residential buildings (TSN, November 4, 1983, pp. 50-51). The petitioners submitted no competent evidence to corroborate their oral testimonies or rebut the testimony given by Engr. Alindada.

We also do not agree with the petitioner's submission that warning signs of noxious gas should have been put up in the toilet in addition to the signs of "MEN" and "WOMEN" already in place in that area. Toilets and septic tanks are not nuisances per se as defined in Article 694 of the New Civil Code which would necessitate warning signs for the protection of the public. While the construction of these public facilities demands utmost compliance with safety and sanitary requirements, the putting up of warning signs is not one of those requirements. The testimony of Engr. Alindada on this matter is elucidative:

"ATTY. ALBAY:

"Q Mr. Witness, you mentioned the several aspects of the approval of the building permit which include the plans of an architect, sanitary engineer and electrical plans. All of these still pass your approval as building official, is that correct?

DEMETRIO ALINDADA:

"A Yes.

"Q So there is the sanitary plan submitted to and will not be approved by you unless the same is in conformance with the provisions of the building code or sanitary requirements?

"A Yes, for private building constructions.

"Q How about public buildings?

"A For public buildings, they are exempted for payment of building permits but still they have to have a building permit.

"Q But just the same, including the sanitary plans, it requires your approval?

"A Yes, it requires also.

"Q Therefore, under the National Building Code, you are empowered not to approve sanitary plans if they are not in conformity with the sanitary requirements?

"A Yes.

"Q Now, in private or public buildings, do you see any warning signs in the vicinity of septic tanks?

"A There is no warning sign.

"Q In residential buildings do you see any warning sign?

"A There is none.

"ATTY. AMPIG:

We submit that the matter is irrelevant and immaterial, Your Honor.

"ATTY. ALBAY:

But that is in consonance with their cross-examination, your Honor.

"COURT:

Anyway it is already answered.

"ATTY. ALBAY:

"Q These warning signs, are these required under the preparation of the plans?

"A It is not required.

"Q I will just reiterate, Mr. Witness. In residences, for example like the residence of Atty. Ampig or the residence of the honorable Judge, would you say that the same principle of the septic tank, from the water closet to the vault, is being followed?

"A Yes.

"ATTY. ALBAY:

That will be all, Your Honor." (TSN, December 6, 1983, pp. 62-63)

In view of this factual milieu, it would appear that an accident such as toxic gas leakage from the septic tank is unlikely to happen unless one removes its covers. The accident in the case at bar occurred because the victims on their own and without authority from the public respondent opened the septic tank. Considering the nature of the task of emptying a septic tank especially one which has not been cleaned for years, an ordinarily prudent person should undoubtedly be aware of the attendant risks. The victims are no exception; more so with Mr. Bertulano, an old hand in this kind of service, who is presumed to know the hazards of the job. His failure, therefore, and that of his men to take precautionary measures for their safety was the proximate cause of the accident. In *Culion Ice, Fish and Elect. Co., v. Phil. Motors Corporation* (55 Phil. 129, 133), We held that when a person holds himself out as being competent to do things requiring professional skill, he will be held liable for negligence if he fails to exhibit the care and skill of one ordinarily skilled in the particular work which he attempts to do (underscoring ours). The fatal accident in this case would not have happened but for the victims' negligence. Thus, the appellate court was correct to observe that:

"x x x. Could the victims have died if they did not open the septic tank which they were not in the first place authorized to open? Who between the passive object (septic tank) and the active subject (the victims herein) who, having no authority therefore, arrogated unto themselves, the task of opening the septic tank which caused their own deaths should be responsible for such deaths. How could the septic tank which has been in existence since the 1950's be the proximate cause of an accident that occurred only on November 22, 1975? The stubborn fact remains that since 1956 up to occurrence of the accident in 1975 no injury nor death was caused by the septic tank. The only reasonable conclusion that could be drawn from the above is that the victims' death was caused by their own negligence in opening the septic tank. x x x." (Rollo, p. 23)

Petitioners further contend that the failure of the market master to supervise the area where the septic tank is located is a reflection of the negligence of the public respondent.

We do not think so. The market master knew that work on the septic tank was still forthcoming. It must be remembered that the bidding had just been conducted. Although the winning bidder was already known, the award to him was still to be made by the Committee on Awards. Upon the other hand, the accident which befell the victims who are not in any way connected with the winning bidder happened before the award could be given. Considering that there was yet no award and order to commence work on the septic tank, the duty of the market master or his security guards to supervise the work could not have started (TSN, September 13, 1983, p. 40). Also, the victims could not have been seen working in the area because the septic tank was hidden by a garbage storage which is more or less ten (10) meters away from the comfort room itself (TSN, *ibid*, pp. 38-39). The surreptitious way in which the victims did their job without clearance from the market master or any of the

security guards goes against their good faith. Even their relatives or family members did not know of their plan to clean the septic tank.

Finally, petitioners' insistence on the applicability of Article 24 of the New Civil Code cannot be sustained. Said law states:

"Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

We approve of the appellate court's ruling that "(w)hile one of the victims was invited to bid for said project, he did not win the bid, therefore, there is a total absence of contractual relations between the victims and the City Government of Davao City that could give rise to any contractual obligation, much less, any liability on the part of Davao City." (Rollo, p. 24) The accident was indeed tragic and We empathize with the petitioners. However, the herein circumstances lead Us to no other conclusion than that the proximate and immediate cause of the death of the victims was due to their own negligence. Consequently, the petitioners cannot demand damages from the public respondent.

ACCORDINGLY, the amended decision of the Court of Appeals dated January 11, 1990 is AFFIRMED. No costs.

SO ORDERED.

Narvasa, C.J., Cruz, Grino-Aquino, and Bellosillo, JJ., concur.

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