ARMANDO JOSE T PAZ AND MANILA CENTRAL BUS LINES (MCL), REPRESENTED BY ITS GENERAL MANAGER MR. DANILO T. DE DIOS, PETITIONERS VS. COURT OF APPEALS, ROMMEL ABRAHAM, REPRESENTED BY...

G.R. Nos. 118441-42. January 18, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, reversing the decision of the Regional Trial Court, Branch 172, Valenzuela, Metro Manila and ordering petitioners to pay damages for injuries to persons and damage to property as a result of a vehicular accident.

The facts are as follows:

Petitioner Manila Central Bus Lines Corporation (MCL) is the operator-lessee of a public utility bus (hereafter referred to as Bus 203) with plate number NVR-III-TB-PIL and body number 203. Bus 203 is owned by the Metro Manila Transit Corporation and is insured with the Government Service Insurance System.

On February 22, 1985, at around six o'clock in the morning, Bus 203, then driven by petitioner Armando Jose, collided with a red Ford Escort driven by John Macarubo on MacArthur Highway, in Marulas, Valenzuela, Metro Manila. Bus 203 was bound for Muntinlupa, Rizal, while the Ford Escort was headed towards Malanday, Valenzuela on the opposite lane. As a result of the collision, the left side of the Ford Escort's hood was severely damaged while its driver, John Macarubo, and its lone passenger, private respondent Rommel Abraham, were seriously injured. The driver and conductress of Bus 203 rushed Macarubo and Abraham to the nearby Fatima Hospital where Macarubo lapsed into a coma. Despite surgery, Macarubo failed to recover and died five days later. Abraham survived, but he became blind on the left eye which had to be removed. In addition, he sustained a fracture on the forehead and multiple lacerations on the face, which caused him to be hospitalized for a week.

On March 26, 1985, Rommel Abraham, represented by his father, Felixberto, instituted Civil Case No. 2206-V-85 for damages against petitioners MCL and Armando Jose in the Regional Trial Court, Branch 172, Valenzuela.

On July 17, 1986, the spouses Jose and Mercedes Macarubo, parents of the deceased John Macarubo, filed their own suit for damages in the same trial court, where it was docketed as Civil Case No. 2428-V-86, against MCL alone. On the other hand, MCL filed a third-party complaint against Juanita Macarubo, registered owner of the Ford Escort on the theory that John Macarubo was negligent and that he was the "authorized driver" of Juanita Macarubo. The latter, in turn, filed a counterclaim for damages against MCL for the damage to her car. Civil Case No. 2206-V-85 and Civil Case No. 2428-V-86 were consolidated and later tried jointly. The facts, as found by the trial court, are as follows:

> In Civil Case No. 2206-V-85, the Court heard the testimonies that during the night previous to the accident of February 22, 1985 at 6:15 a.m., Rommel Abraham and John Macarubo were at a party. There was therefore, no

> sleep for them, notwithstanding testimony to the contrary and the service of drinks cannot be totally discounted. After the party at 11 p.m., while both Rommel and John were enroute home to Valenzuela from La Loma, the car encountered mechanical trouble and had to be repaired as its cross-joint was detached. The defect of a cross-joint is not minor and repair thereof would as testified to by Rommel lasted up to early dawn and the car started to run only after five o'clock in the morning. With lack of sleep, the strains of a party still on their bodies, and the attention to the repair coupled with the wait until the car was ready to run, are potentials in a driver for possible accident. The accident happened at 6:15 a.m. when the physical and mental condition of the driver John Macarubo was as expected not too fit for the driving as he could not anymore control the car. The desire to be home quick for the much needed sleep could have prompted him to overtake the preceding vehicle.
>
> Indeed the pictures taken of the two vehicles (Exh. 1,2 and 3) will clearly show that the MCL bus was at its proper lane and not in an overtaking position while the car driven by John Macarubo was positioned in a diagonal manner and crossed the line of the MCL, which is an indication of an overtaking act. If it were the bus that was overtaking at the time, the car would have been thrown farther away from the point of the impact.
>
> The court is convinced of the close supervision and control of MCL over their drivers, and its exercise of due diligence in seeing to it that no recklessness is committed by its employees, drivers especially, from the unrebutted testimonies of Cesar Cainglet.
>
> The Court noted the respective damages of the two vehicles especially the point of the impact. From these damages as shown by the picture, it can be clearly deduced which vehicle did the bumping. It was the car driven by John Macarubo that hit the MCL which was on its right and correct lane.[2]

Based on the foregoing facts, the trial court rendered judgment on September 28, 1989, dismissing both civil cases against MCL and ruling favorably on its third-party complaint against Juanita Macarubo, ordering the latter to pay MCL P54,232.12 as actual damages, P24,000.00 for lost income, and P10,000.00 as attorney's fees.

Rommel Abraham, the Macarubo spouses, and third-party defendant Juanita Macarubo then appealed to the Court of Appeals which, on December 21, 1994, rendered a decision reversing the decision of the trial court. It held (1) that the trial court erred in disregarding Rommel Abraham's uncontroverted testimony that the collision was due to the fault of the driver of Bus 203; (2) that the trial court erred in relying on photographs (Exhs. 1-3) which had been taken an hour after the collision as within that span of time, the positions of the vehicles could have been changed; (3) that the photographs do not show that the Ford Escort was overtaking another vehicle when the accident happened and that John Macarubo, its driver, was negligent; and (4) that MCL failed to make a satisfactory showing that it exercised due diligence in the selection and supervision of its driver Armando Jose. The dispositive portion of the decision reads:

> WHEREFORE, the appealed decision is hereby REVERSED and the defendants-appellees MCL and Armando Jose are adjudged to pay jointly and severally:
>
> - Rommel Abraham, represented by his father Felixberto Abraham:
>
> (a) P37,576.47 as actual damages;
>
> (b) P50,000.00 as compensatory damages;
>
> (c) P15,000.00 as moral damages;
>
> (d) P5,000.00 as exemplary damages; and
>
> (e) P10,000.00 as attorney's fees.
>
> - The heirs of John Macarubo:

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(a) P50,000.00 as indemnity for his death;

(b) P50,000.00 as moral damages;

(c) P10,000.00 as exemplary damages; and

(d) P10,000.00 as attorney's fees.

Costs against the appellees.

SO ORDERED.

Hence, this petition for review on certiorari. Petitioners MCL and Armando Jose raise four issues which boil down to the question whether it was the driver of Bus 203 or that of the Ford Escort who was at fault for the collision of the two vehicles.

It is well-settled that a question of fact is to be determined by the evidence offered to support the particular contention.[3] In the proceedings below, petitioners relied mainly on photographs, identified in evidence as Exhibits 1 to 3, showing the position of the two vehicles after the collision. On the other hand, private respondents offered the testimony of Rommel Abraham to the effect that the collision took place because Bus 203 invaded their lane.[4]

The trial court was justified in relying on the photographs rather than on Rommel Abraham's testimony which was obviously biased and unsupported by any other evidence. Physical evidence is a mute but an eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence.[5] In criminal cases such as murder or rape where the accused stands to lose his liberty if found guilty, this Court has, in many occasions, relied principally upon physical evidence in ascertaining the truth. In People v. Vasquez,[6] where the physical evidence on record ran counter to the testimonial evidence of the prosecution witnesses, we ruled that the physical evidence should prevail.[7]

In this case, the positions of the two vehicles, as shown in the photographs (Exhs. 1 to 3) taken by MCL line inspector Jesus Custodio about an hour and fifteen minutes after the collision, disputes Abraham's self-serving testimony that the two vehicles collided because Bus 203 invaded the lane of the Ford Escort and clearly shows that the case is exactly the opposite of what he claimed happened. Contrary to Abraham's testimony, the photographs show quite clearly that Bus 203 was in its proper lane and that it was the Ford Escort which usurped a portion of the opposite lane. The three photographs show the Ford Escort positioned diagonally on the highway, with its two front wheels occupying Bus 203's lane. As shown by the photograph marked Exhibit 3, the portion of MacArthur Highway where the collision took place is marked by a groove which serves as the center line separating the right from the left lanes. The photograph shows that the left side of Bus 203 is about a few feet from the center line and that the bus is positioned parallel thereto. This negates the claim that Bus 203 was overtaking another vehicle and, in so doing, encroached on the opposite lane occupied by the Ford Escort.

Indeed, Bus 203 could not have been overtaking another vehicle when the collision happened. It was filled with passengers,[8] and it was considerably heavier and larger than the Ford Escort. If it was overtaking another vehicle, it necessarily had to accelerate. The acceleration of its speed and its heavy load would have greatly increased its momentum so that the impact of the collision would have thrown the smaller and lighter Ford Escort to a considerable distance from the point of impact. Exhibit 1, however, shows that the Ford Escort's smashed hood was only about one or two meters from Bus 203's damaged left front. If there had been a great impact, such as would be the case if Bus 203 had been running at a high speed, the two vehicles should have ended up far from each other.

In discrediting the physical evidence, the appellate court made the following observations:

> We cannot believe that it was the car which overtook another vehicle and proceeded to the lane occupied by the bus. There was a traffic jam on the "bus lane" while traffic was light on the "car lane." Indeed, we find it inconceivable that the car, occupying the lane without any traffic, would overtake and traverse a heavy traffic lane.[9] (Underscoring supplied.)

This is correct. However, the fact remains that when the Ford Escort finally came to a stop, it encroached on the opposite lane occupied by Bus 203.

Significantly, Rommel Abraham testified that on February 21, 1985, the night before the accident, he and John Macarubo went to a friend's house in La Loma where they stayed until 11 p.m.[10] Abraham's explanation as to why they did not reach Valenzuela until six o'clock in the morning of the next day when the accident happened indicates that the Ford Escort careened and slammed against Bus 203 because of a mechanical defect. Abraham told the court:[11]

> ATTY. RESPICIO:
>
> Q: I am sorry, Your honor. After leaving Arnel's place where did you go?
>
> ROMMEL ABRAHAM
>
> A: We proceeded in going home, sir.
>
> Q: You were on your way home?
>
> A: Yes, sir.
>
> Q: What time did you . . . I will reform the question. You met the accident at about 6:00 o'clock the next day, 6:00 o'clock in the morning the next day, did it take you long to reach BBB?
>
> A: Our car had a mechanical trouble somewhere at 2nd Avenue, sir.
>
> Q: What kind of trouble?
>
> A: The cross-joint were detached, sir.
>
> Q: Are you familiar with cars?
>
> A: A little, sir.
>
> COURT:
>
> Q: What time was that when you have this cross-joint problem?
>
> A: About 12:00 o'clock perhaps, sir.
>
> Q: What happened to the cross joint?
>
> A: It was cut, ma'am.
>
> Q: You were able to repair that cross-joint 12:00 o'clock and you were able to run and reached this place of accident at 6:00 o'clock?
>
> A: No, we we're not able to get spare parts, ma'am.
>
> Q: Why were you able to reach this place at 6:00 o'clock?
>
> A: We went home and look for the spare parts in their house, ma'am.

Q: House of Macarubo?

A: Yes, ma'am.

Q: So you were able to repair the car?

A: Yes, ma'am.

Q: What time were you able to repair the car?

A: Around 5:00 o'clock in the morning, sir.

Q: You were able to replace the cross-joint or what?

A: Ginawaan ng paraan, ma'am.

Q: How?

A: The cross-joint were welded in order to enable us to go home, ma'am.

Q: No spare parts was replaced

A: No, ma'am.

Thus, as Rommel Abraham himself admitted, the Ford Escort's rear cross-joint was cut/detached. This mechanism controls the movement of the rear tires. Since trouble in the cross-joint affects a car's maneuverability, the matter should have been treated as a serious mechanical problem. In this case, when asked if they were able to repair the cross-joint, Abraham said "Ginawaan ng paraan, ma'am," by simply welding them just so they could reach home. His testimony indicates that the rear cross-joint was hastily repaired and that, at most, the kind of repairs made thereon were merely temporary; just enough to enable Abraham and Macarubo to reach home. Given such fact, the likelihood is that while the Ford Escort might not have been overtaking another vehicle, it actually strayed into the bus' lane because of the defective cross-joint, causing its driver to lose control of the vehicle.

The appellate court refused to give credence to the physical evidence on the ground that the photographs were taken an hour after the collision and that within such span of time the bus could have been moved because there was no showing that the driver left the scene of the accident. This is not correct. Constancia Gerolada, Bus 203's conductress, testified that, immediately after the collision, she and bus driver, petitioner Armando Jose, took the injured driver and passenger of the Ford Escort to the Fatima Hospital.[12] This fact is not disputed by private respondents.

Rommel Abraham mentioned in his appellant's brief in the appellate court a sketch of the scene of the accident allegedly prepared by one Patrolman Kalale, which shows Bus 203 to be occupying the Ford Escort's lane. However, the records of this case do not show that such a sketch was ever presented in evidence in the trial court or that Patrolman Kalale was ever presented as a witness to testify on the sketch allegedly prepared by him. Under Rule 132, §3 of the Rules on Evidence, courts cannot consider any evidence unless formally offered by a party.

Finally, the appellate court also ruled that MCL failed to make a satisfactory showing that it exercised the diligence of a good father of a family in the selection and supervision of its bus driver, Armando Jose.[13] Under the circumstances of this case, we hold that proof of due diligence in the selection and supervision of employees is not required.

The Civil Code provides in pertinent parts:

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> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this chapter.
>
> Art. 2180. The obligation imposed in Art. 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> . . . .
>
> 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.
>
> . . . .
>
> 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.

Thus, the responsibility of employers is premised upon the presumption of negligence of their employees. As held in Poblete v. Fabros:[14]

> [I]t is such a firmly established principle, as to have virtually formed part of the law itself, that the negligence of the employee gives rise to the presumption of negligence on the part of the employer. This is the presumed negligence in the selection and supervision of the employee. The theory of presumed negligence, in contrast with the American doctrine of respondent superior, where the negligence of the employee is conclusively presumed to be the negligence of the employer, is clearly deducible from the last paragraph of Article 2180 of the Civil Code which provides that the responsibility therein mentioned shall cease if the employers prove that they observed all the diligence of a good father of a family to prevent damages (12 Manresa, 657; Balica vs. Litonjua and Leynes, 30 Phil. 624; Cangco vs. Manila Railroad Co., 30 Phil. 768), as observed in the same cases just cited.

Therefore, before the presumption of the employer's negligence in the selection and supervision of its employees can arise, the negligence of the employee must first be established. While the allegations of negligence against the employee and that of an employer-employee relation in the complaint are enough to make out a case of quasi-delict under Art. 2180 of the Civil Code, the failure to prove the employee's negligence during the trial is fatal to proving the employer's vicarious liability. In this case, private respondents failed to prove their allegation of negligence against driver Armando Jose who, in fact, was acquitted in the case for criminal negligence arising from the same incident.[15]

For the foregoing reasons, we hold that the appellate court erred in holding petitioners liable to private respondents. The next question then is whether, as the trial court held, private respondent Juanita Macarubo is liable to petitioners.

Article 2180 of the Civil Code makes the persons specified therein responsible for the quasi-delicts of others. The burden is upon MCL to prove that Juanita Macarubo is one of those specified persons who are vicariously liable for the negligence of the deceased John Macarubo.

In its third-party complaint, MCL alleged that Juanita Macarubo was the registered owner of the Ford Escort car and that John Macarubo was the "authorized driver" of the car.[16] Nowhere was it alleged that John Macarubo was the son, ward, employee or pupil of private respondent Juanita Macarubo so as to make the latter vicariously liable for the negligence of John Macarubo. The allegation that John Macarubo was "the authorized driver" of the Ford Escort is not equivalent to an allegation that he was an employee of Juanita Macarubo. That John Macarubo was the "authorized driver" of the car simply means that he drove the Ford Escort with the permission of Juanita

Macarubo.

Nor did MCL present any evidence to prove that Juanita Macarubo was the employer of John Macarubo or that she is in any way liable for John Macarubo's negligence under Art. 2180 of the Civil Code. For failure to discharge its burden, MCL's third-party complaint should be dismissed.

WHEREFORE, the decision of the Court of Appeals is REVERSED and the complaints filed in Civil Cases Nos. 2206-V-85 and 24428-V-86 against Manila Central Bus Lines and Armando Jose, as well as the third-party complaint filed in Civil Case No. 2206-V-85 against Juanita Macarubo, are hereby DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Angelina Sandoval-Gutierrez, concurred in by Justices Oscar M. Herrera and Ruben T. Reyes.

[2] RTC Decision, Rollo, p. 32.

[3] See Saludo, Jr. v. Court of Appeals, 207 SCRA 498 (1992)

[4] Quoted below are pertinent portions of Rommel Abraham's testimony during direct examination:

> ATTY. SINENENG:
>
> Q - While you were at BBB, Valenzuela, Metro Manila, in the morning of February 22, 1985 at 6 o'clock, do you recall if there was anything unusual that happen[ed]?
>
> ROMMEL ABRAHAM:
>
> A - Yes, we ha[d] an accident [with an] MCL bus, sir.
>
> Q - Please tell the Court what was the accident? Chief
>
> A - We were bumped by the MCL bus which was overtaking a passenger jeepney, sir.
>
> Q - At that time that you were inside the car who was driving the car?
>
> A - John Macarubo, sir.
>
> Q - What happened when you were bumped by MCL bus?
>
> A - We lost consciousness, sir.
>
> Q - How did you know it was an MCL bus that bumped you?
>
> A - Before we were bumped I was able to see the bus, sir.
>
> Q - In what part of the car were you hit at the time you were bumped by the MCL bus?

A - Right side beside the driver seat, sir.

Q - You mean at the front side?

A - Yes, sir.

Q - What part of your car was bumped by the MCL bus?

A - The front part of the car, sir.

Q - Approximately how far was the car you were riding from the bus when you first saw the bus coming?

A - About 3 meters, sir.

Q - And in what part of the street [was] your car travelling at that time?

A - Right lane, sir.

Q - Right lane of the street?

A - Yes, sir.

Q - How about the bus that bumped you where was it travelling?

A - Inside our lane, sir.

Q - You mean the bus is in your lane?

A - Yes, sir.

(TSN, pp. 5-7, March 31, 1987)

[5] People v. Uycoque, 246 SCRA 769 (1995)

[6] 280 SCRA 160 (1997).

[7] Id., at 175.

[8] TSN of Constancia Gerolada, p. 13, Dec. 1, 1988.

[9] CA Decision; Rollo, p. 39.

[10] TSN, pp. 11-12, May 19, 1987.

[11] Id., pp. 13-16 (Emphasis added)

[12] TSN, p. 7, Dec. 1, 1988.

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[13] CA Decision; Rollo, p. 41.

[14] 93 SCRA 200, 204 (1979)

[15] See MCL's Comment to the Manifestation and Motion by the Macarubos; Records, p. 273.

[16] Records, p. 42.

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