

PANTRANCO NORTH EXPRESS, INC., PETITIONER, VS. MARICAR BASCOS BAESA, THRU HER PERSONAL GUARDIAN FRANCISCA O. BASCOS, FE O. ICO, IN HER BEHALF AND IN BEHALF OF HER MINOR CHILDREN...

G.R. Nos. 79050-51. November 14, 1989

Ponente: CORTES, J.

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CORTES, J.:

In this Petition, Pantranco North Express Inc. (PANTRANCO) asks the Court to review the decision of the Court of Appeals in CA-G.R. CV No. 05494-95 which affirmed the decisions of the then Court of First Instance of Rosales, Pangasinan in Civil Case No. 561-R and Civil Case No. 589-R wherein PANTRANCO was ordered to pay damages and attorney's fees to herein private respondents.

The pertinent facts are as follows:

At about 7:00 o'clock in the morning of June 12, 1981, the spouses Ceasar and Marilyn Baesa and their children Harold Jim, Marcelino and Maricar, together with spouses David Ico and Fe O. Ico with their son Erwin Ico and seven other persons, were aboard a passenger jeepney on their way to a picnic at Malalam River, Ilagan, Isabela, to celebrate the fifth wedding anniversary of Ceasar and Marilyn Baesa.

The group, numbering fifteen (15) persons, rode in the passenger jeepney driven by David Ico, who was also the registered owner thereof. From Ilagan, Isabela, they proceeded to Barrio Capayacan to deliver some viands to one Mrs. Bascos and thenceforth to San Felipe, taking the highway going to Malalam River. Upon reaching the highway, the jeepney turned right and proceeded to Malalam River at a speed of about 20 kph. While they were proceeding towards Malalam River, a speeding PANTRANCO bus from Aparri, on its regular route to Manila, encroached on the jeepney's lane while negotiating a curve, and collided with it.

As a result of the accident David Ico, spouses Ceasar Baesa and Marilyn Baesa and their children, Harold Jim and Marcelino Baesa, died while the rest of the passengers suffered injuries. The jeepney was extensively damaged. After the accident the driver of the PANTRANCO Bus, Ambrosio Ramirez, boarded a car and proceeded to Santiago, Isabela. From that time on up to the present, Ramirez has never been seen and has apparently remained in hiding.

All the victims and/or their surviving heirs except herein private respondents settled the case amicably under the "No Fault" insurance coverage of PANTRANCO.

Maricar Baesa through her guardian Francisca O. Bascos and Fe O. Ico for herself and for her minor children, filed separate actions for damages arising from quasi-delict against PANTRANCO, respectively docketed as Civil Case No. 561-R and 589-R of the Court of First Instance of Pangasinan.

In its answer, PANTRANCO, aside from pointing to the late David Ico's alleged negligence as the proximate

cause of the accident, invoked the defense of due diligence in the selection and supervision of its driver, Ambrosio Ramirez.

On July 3, 1984, the CFI of Pangasinan rendered a decision against PANTRANCO awarding the total amount of Two Million Three Hundred Four Thousand Six Hundred Forty-Seven Pesos (P2,304,647.00) as damages, plus 10% thereof as attorney's fees and costs to Maricar Baesa in Civil Case No. 561-R, and the total amount of Six Hundred Fifty Two Thousand Six Hundred Seventy-Two Pesos (P652,672.00) as damages, plus 10% thereof as attorney's fees and costs to Fe Ico and her children in Civil Case No. 589-R. On appeal, the cases were consolidated and the Court of Appeals modified the decision of the trial court by ordering PANTRANCO to pay the total amount of One Million One Hundred Eighty-Nine Thousand Nine Hundred Twenty-Seven Pesos (P1,189,927.00) as damages, plus Twenty Thousand Pesos (P20,000.00) as attorney's fees to Maricar Baesa, and the total amount of Three Hundred Forty-Four Thousand Pesos (P344,000.00) plus Ten Thousand Pesos (P10,000.00) as attorney's fees to Fe Ico and her children, and to pay the costs in both cases. The dispositive portion of the assailed decision reads as follows:

WHEREFORE, the decision appealed from is hereby modified by ordering the defendant PANTRANCO North Express, Inc. to pay:

I. The plaintiff in Civil Case No. 561-R, Maricar Bascos Baesa, the following damages:

- A) As compensatory damages for the death of Ceasar Baesa - P30,000.00;
- B) As compensatory damages for the death of Marilyn Baesa - P30,000.00;
- C) As compensatory damages for the death of Harold Jim Baesa and Marcelino Baesa - P30,000.00;
- D) For the loss of earnings of Ceasar Baesa - P630,000.00;
- E) For the loss of earnings of Marilyn Bascos Baesa - P375,000.00;
- F) For the burial expenses of the deceased Ceasar and Marilyn Baesa - P 41,200.00
- G) For hospitalization expenses of Maricar Baesa - P3,727.00
- H) As moral damages - P50,000.00;
- I) As attorney's fees - P20,000.00.

II. The plaintiffs in Civil Case No. 589-R, the following damages:

- A) As compensatory damages for the death of David Ico - P30,000.00;
- B) For loss of earning capacity of David Ico - P252,000.00
- C) As moral damages for the death of David Ico and the injury of Fe Ico - P30,000.00;
- D) As payment for the jeepney - P20,000.00;
- E) For the hospitalization of Fe Ico - P12,000.00;
- F) And for attorney's fees - P10,000.00;

and to pay the costs in both cases.

The amount of P25,000.00 paid to Maricar Bascos Baesa, plaintiff in Civil Case No. 561-R, and the medical expenses in the sum of P3,273.55, should be deducted from the award in her favor.

All the foregoing amounts herein awarded except the costs shall earn interest at the legal rate from date of this decision until fully paid. [CA Decision, pp. 14-15; Rollo, pp. 57-58.]

PANTRANCO filed a motion for reconsideration of the Court of Appeal's decision, but on June 26, 1987, it denied the same for lack of merit. PANTRANCO then filed the instant petition for review.

I

Petitioner faults the Court of Appeals for not applying the doctrine of the "last clear chance" against the jeepney driver. Petitioner claims that under the circumstances of the case, it was the driver of the passenger jeepney who had the last clear chance to avoid the collision and was therefore negligent in failing to utilize with reasonable care and competence his then existing opportunity to avoid the harm.

The doctrine of the 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 for damages.

To avoid liability for the negligence of its driver, petitioner claims that the original negligence of its driver was not the proximate cause of the accident and that the sole proximate cause was the supervening negligence of the jeepney driver David Ico in failing to avoid the accident. It is petitioner's position that even assuming arguendo, that the bus encroached into the lane of the jeepney, the driver of the latter could have swerved the jeepney towards the spacious dirt shoulder on his right without danger to himself or his passengers.

The above contention of petitioner is manifestly devoid of merit.

Contrary to the petitioner's contention, the doctrine of "last clear chance" finds no application in this case. For the doctrine to be applicable, it is necessary to show that the person who allegedly had the last opportunity to avert the accident was aware of the existence of the peril or should, with exercise of due care, have been aware of it. One cannot be expected to avoid an accident or injury if he does not know or could not have known the existence of the peril. In this case, there is nothing to show that the jeepney driver David Ico knew of the impending danger. When he saw at a distance that the approaching bus was encroaching on his lane, he did not immediately swerve the jeepney to the dirt shoulder on his right since he must have assumed that the bus driver will return the bus to its own lane upon seeing the jeepney approaching from the opposite direction. As held by this Court in the case of *Vda. De Bonifacio v. BLTB*, G.R. No. L-26810, August 31, 1970, 34 SCRA 618, a motorist who is properly

proceeding on his own side of the highway is generally entitled to assume that an approaching vehicle coming towards him on the wrong side, will return to his proper lane of traffic. There was nothing to indicate to David Ico that the bus could not return to its own lane or was prevented from returning to the proper lane by anything beyond the control of its driver. Leo Marantan, an alternate driver of the Pantranco bus who was seated beside the driver Ramirez at the time of the accident, testified that Ramirez had no choice but to swerve the steering wheel to the left and encroach on the jeepney's lane because there was a steep precipice on the right [CA Decision, p. 2; Rollo, p. 45.] However, this is belied by the evidence on record which clearly shows that there was enough space to swerve the bus back to its own lane without any danger [CA Decision, p. 7; Rollo, p. 50.]

Moreover, both the trial court and the Court of Appeals found that at the time of the accident the Pantranco bus was speeding towards Manila [CA Decision, p. 2; Rollo, p. 45.] By the time David Ico must have realized that the bus was not returning to its own lane, it was already too late to swerve the jeepney to his right to prevent an accident. The speed at which the approaching bus was running prevented David Ico from swerving the jeepney to the right shoulder of the road in time to avoid the collision. Thus, even assuming that the jeepney driver perceived the danger a few seconds before the actual collision, he had no opportunity to avoid it. This Court has held that the last clear chance doctrine "can never apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered" [Ong v. Metropolitan Water District, *supra*.]

Petitioner likewise insists that David Ico was negligent in failing to observe Section 43 (c), Article III Chapter IV of Republic Act No. 4136* which provides that the driver of a vehicle entering a through highway or a stop intersection shall yield the right of way to all vehicles approaching in either direction on such through highway.

Petitioner's misplaced reliance on the aforesaid law is readily apparent in this case. The cited law itself provides that it applies only to vehicles entering a through highway or a stop intersection. At the time of the accident, the jeepney had already crossed the intersection and was on its way to Malalam River. Petitioner itself cited Fe Ico's testimony that the accident occurred after the jeepney had travelled a distance of about two (2) meters from the point of intersection [Petition p. 10; Rollo, p. 27.] In fact, even the witness for the petitioner, Leo Marantan, testified that both vehicles were coming from opposite directions [CA Decision, p. 7; Rollo, p. 50], clearly indicating that the jeepney had already crossed the intersection.

Considering the foregoing, the Court finds that the negligence of petitioner's driver in encroaching into the lane of the incoming jeepney and in failing to return the bus to its own lane immediately upon seeing the jeepney coming from the opposite direction was the sole and proximate cause of the accident without which the collision would not have occurred. There was no supervening or intervening negligence on the part of the jeepney driver which would have made the prior negligence of petitioner's driver a mere remote cause of the accident.

II

On the issue of its liability as an employer, petitioner claims that it had observed the diligence of a good father of a family to prevent damage, conformably to the last paragraph of Article 2180 of the Civil Code. Petitioner adduced evidence to show that in hiring its drivers, the latter are required to have professional driver's license and police clearance. The drivers must also pass written examinations, interviews and practical driving tests, and are required to undergo a six-month training period. Rodrigo San Pedro, petitioner's Training Coordinator, testified on petitioner's policy of conducting regular and continuing training programs and safety seminars for its drivers, conductors, inspectors and supervisors at a frequency rate of at least two (2) seminars a month.

On this point, the Court quotes with approval the following findings of the trial court which was adopted by the Court of Appeals in its challenged decision:

When an injury is caused by the negligence of an employee, there instantly arises a presumption that the employer has been negligent either in the selection of his employees or in the supervision over their acts. Although this presumption is only a disputable presumption which could be overcome by proof of diligence of a good father of a family, this Court believes that the evidence submitted by the defendant to show that it exercised the diligence of a good father of a family in the case of -Ramirez, as a company driver is far from sufficient. No support evidence has been adduced. The professional driver's license of Ramirez has not been produced. There is no proof that he is between 25 to 38 years old. There is also no proof as to his educational attainment, his age, his weight and the fact that he is married or not. Neither are the result of the written test, psychological and physical test, among other tests, have been submitted in evidence [sic]. His NBI or police clearances and clearances from previous employment were not marked in evidence. No evidence was presented that Ramirez actually and really attended the seminars. Vital evidence should have been the certificate of attendance or certificate of participation or evidence of such participation like a logbook signed by the trainees when they attended the seminars. If such records are not available, the testimony of the classmates that Ramirez was their classmate in said seminar (should have been presented) [CA Decision, pp. 8-9; Rollo, pp. 51-52.]

Petitioner contends that the fact that Ambrosio Ramirez was employed and remained as its driver only means that he underwent the same rigid selection process and was subjected to the same strict supervision imposed by petitioner on all applicants and employees. It is argued by the petitioner that unless proven otherwise, it is presumed that petitioner observed its usual recruitment procedure and company policies on safety and efficiency [Petition, p. 20; Rollo, p. 37.]

The Court finds the above contention unmeritorious.

The finding of negligence on the part of its driver Ambrosio Ramirez gave rise to the presumption of negligence on the part of petitioner and the burden of proving that it exercised due diligence not only in the selection of its employees but also in adequately supervising their work rests with the petitioner (*Lilius v. Manila Railroad Company*, 59 Phil. 758 (1934), *Umali v. Bacani*, G.R. No. L-40570, June 30, 1976, 69 SCRA 623.) Contrary to petitioner's claim, there is no presumption that the usual recruitment procedures and safety standards were observed. The mere issuance of rules and regulations and the formulation of various company policies on safety, without showing that they are being complied with, are not sufficient to exempt petitioner from liability arising from the negligence of its employee. It is incumbent upon petitioner to show that in recruiting and employing the erring driver, the recruitment procedures and company policies on efficiency and safety were followed. Petitioner failed to do this. Hence, the Court finds no cogent reason to disturb the finding of both the trial court and the Court of Appeals that the evidence presented by the petitioner, which consists mainly of the uncorroborated testimony of its Training Coordinator, is insufficient to overcome the presumption of negligence against petitioner.

III

On the question of damages, petitioner claims that the Court of Appeals erred in fixing the damages for the loss of earning capacity of the deceased victims. Petitioner assails respondent court's findings because no documentary evidence in support thereof, such as income tax returns, pay-rolls, pay slips or invoices obtained in the usual course of business, were presented [Petition, p. 22; Rollo, p. 39.] Petitioner argues that the "bare and self-serving testimonies of the wife of the deceased David Ico and the mother of the deceased Marilyn Baesa ... have no probative value to sustain in law the Court of Appeals' conclusion on the respective earnings of the deceased victims." [Petition, pp. 21-22; Rollo, pp. 38-39.] It is petitioner's contention that the evidence presented by the private respondent does not meet the requirements of clear and satisfactory evidence to prove actual and compensatory damages.

The Court finds that the Court of Appeals committed no reversible error in fixing the amount of damages for the loss of earning capacity of the deceased victims. While it is true that private respondents should have presented documentary evidence to support their claim for damages for loss of earning capacity of the deceased victims, the absence thereof does not necessarily bar the recovery of the damages in question. The testimony of Fe Ico and Francisca Bascos as to the earning capacity of David Ico and the spouses Baesa, respectively, are sufficient to establish a basis from which the court can make a fair and reasonable estimate of the damages for the loss of earning capacity of the three deceased victims. Moreover, in fixing the damages for loss of earning capacity of a deceased victim, the court can consider the nature of his occupation, his educational attainment and the state of his health at the time of death.

In the instant case, David Ico was thirty eight (38) years old at the time of his death in 1981 and was driving his own passenger jeepney. The spouses Ceasar and Marilyn Baesa were both thirty (30) years old at the time of their death. Ceasar Baesa was a commerce degree holder and the proprietor of the Cauayan Press, printer of the Cauayan Valley Newspaper and the Valley Times at Cauayan, Isabela. Marilyn Baesa graduated as a nurse in 1976 and at the time of her death, was the company nurse, personnel manager, treasurer and cashier of the Ilagan Press at Ilagan, Isabela. Respondent court duly considered these factors, together with the uncontradicted testimonies of Fe Ico and Francisca Bascos, in fixing the amount of damages for the loss of earning capacity of David Ico and the spouses Baesa.

However, it should be pointed out that the Court of Appeals committed error in fixing the compensatory damages for the death of Harold Jim Baesa and Marcelino Baesa. Respondent court awarded to plaintiff (private respondent) Maricar Baesa Thirty Thousand Pesos (P30,000.00) as "compensatory damages for the death of Harold Jim Baesa and Marcelino Baesa." [CA Decision, p.14; Rollo, 57.] In other words, the Court of Appeals awarded only Fifteen Thousand Pesos (P15,000.00) as indemnity for the death of Harold Jim Baesa and another Fifteen Thousand Pesos (P15,000.00) for the death of Marcelino Baesa. This is clearly erroneous. In the case of *People v. de la Fuente*, G.R. Nos. 63251-52, December 29, 1983, 126 SCRA 518, the indemnity for the death of a person was fixed by this Court at Thirty Thousand Pesos (P30,000.00). Plaintiff Maricar Baesa should therefore be awarded Sixty Thousand Pesos (P60,000.00) as indemnity for the death of her brothers, Harold Jim Baesa and Marcelino Baesa or Thirty Thousand Pesos (P30,000.00) for the death of each brother.

The other items of damages awarded by respondent court which were not challenged by the petitioner are hereby affirmed.

WHEREFORE, premises considered, the petition is DENIED, and the decision of respondent Court of Appeals is hereby AFFIRMED with the modification that the amount of compensatory damages for the death of Harold Jim Baesa and Marcelino Baesa are increased to Thirty Thousand Pesos (P30,000.00) each.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

* R.A. 4136 is entitled "An Act to Compile the Laws Relative to Land Transportation and Traffic Rules, To Create A Land Transportation Commission and other Purposes."

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