



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **December 3, 2014**, which reads as follows:*

“G.R. No. 188686 (Prudencio Laconsay vs. Fidel Berog y Caraos, minor, represented by his parents, Spouses Federico and Genoveva Berog). – This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Prudencio Laconsay (Prudencio) which seeks to reverse and set aside the Decision² dated October 6, 2008 and Resolution³ dated June 23, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 81698 which affirmed the Decision⁴ dated December 29, 2003 of the Regional Trial Court (RTC) of Parañaque City, Branch 274, in Civil Case No. 94-0113, which granted the complaint for damages of Fidel Berog (Fidel).

The instant case arose from a vehicular accident along Doña Soledad Street, Better Living Subdivision, Parañaque City on April 22, 1994 which involved a blue Harabas vehicle driven by Severo Ontuca (Ontuca) and Fidel, 11-year-old boy. The said Harabas is registered in the name of Felisa Laconsay (Felisa) but its possession, however, was left with her husband, Prudencio, when they separated in fact sometime in 1990.

Facts of the Case

Prior to April 22, 1994, Prudencio visited the Mary Help of Christians Chapel to check the status of its construction in *Barangay* Don Bosco, Better Living Subdivision, Parañaque City. Prudencio promised the chapel’s engineer that he will bring the Harabas on April 22, 1994 in order to be used to help clean the area. On said date, however, Prudencio needed to go out of town and instead requested Ontuca to drive the Harabas in his stead.

¹ *Rollo*, pp. 26-62.

² Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Myrna Dimaranan-Vidal, concurring; *CA rollo*, pp. 259-281.

³ *Id.* at 345-347.

⁴ Issued by Presiding Judge Fortunito L. Madrona; *id.* at 119-127.

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Ontuca agreed as he has always been designated by Prudencio to drive the Harabas in several previous occasions. Upon arrival at the chapel, Ontuca parked the Harabas and proceeded to clean up the area together with a certain Arthur Dealca. While busy cleaning the chapel, an enraged Daniel Bautista (Bautista) suddenly barged inside the chapel. He held a 15-inch *bolo*⁵ in his hand as he angrily demanded the ignition key of the Harabas. Fearing for his life, Ontuca handed him the key. Bautista left them and headed towards the Harabas. As he started the engine, Ontuca gave chase and tried to ride the Harabas through its front passenger seat. Bautista then sped away from the chapel at high speed.

The Harabas headed along Doña Soledad Street where Fidel was busy fixing his bicycle while seated in between two (2) Toyota Corollas that were parked along a gutter. Fidel's companion suddenly shouted to warn him that a vehicle was fast approaching his way. In no time, the Harabas collided against one of the Toyota Corollas which impact pinned Fidel severely against the other Toyota Corolla. Afterwhich, the Harabas pulled away. Fidel saw its driver flee with a bloody face and saw another man take over the steering wheel of the Harabas. He saw the Harabas being driven again towards where he was. Fidel hurriedly tried to hide his body as fast as he could under the Toyota Corolla but to no avail. His right leg was ran over for the second time by the same Harabas. Because of the incident, Fidel lost consciousness and was rushed to the hospital where his right leg got amputated as it was crushed from the incident. The Medico-Legal Certificate⁶ issued by the hospital set forth the following injuries he sustained, to wit:

FRACTURE, CLOSE, COMMUNUTED PROXIMAL FEMUR, RIGHT.
 FRACTURE, OPEN COMMUNUTED, PROXIMAL TIBIA AND
 FIBULA RIGHT.
 FRACTURE, CLOSE, INFERIOR RANUS, PUBIS, LEFT.
 FRACTURE, CLOSE, FIRST RIB, RIGHT SIDE.
 LACERATED WOUND, 8.0 CM. ANTERIOR LOWER CHEST WALL
 RIGHT.
 LACERATED WOUND, CIRCUMFERENTIAL PROXIMAL 3RD OF
 LEG, RIGHT.
 SWELLING WITH DEFORMITY PROXIMAL THIGH, RIGHT AND
 AT PROXIMAL LEG RIGHT SIDE.
 ABRASIONS, SMALL LINEAR, BOTH UPPER AND LOWER
 EXTREMITIES.
 NO NEUROLOGICAL DEFICITS.⁷

Fidel, as represented by his parents, filed a complaint⁸ for damages against Prudencio, Ontuca, Felisa and Bautista. Prudencio and Ontuca filed an answer. Felisa and Bautista were declared in default.⁹

⁵ Records, Vol. I, p. 70.

⁶ Id. at 20.

⁷ Id.

⁸ Id. at 1-6.

⁹ CA rollo, p. 119.

In the Answer with Counterclaim,¹⁰ Laconsay and Ontuca denied liability and averred: (1) that Prudencio authorized Ontuca to drive the Harabas on April 22, 1994; (2) that Felisa is the registered owner of the Harabas and that she is already living abroad; (3) that Prudencio was out of town when the accident happened; (4) that Bautista forcibly gained possession of the Harabas while armed with a 15-inch *bolo*; (5) that Bautista has never been the driver or employee of Prudencio; (6) that only Bautista should be held liable for damages; (7) that the complaint impleaded Prudencio only because the claimants could not claim from anyone else; and (8) that the preliminary investigation of the case resulted in the exculpation of Prudencio and Ontuca from any liability.

Ruling of the RTC

In a Decision¹¹ dated December 29, 2003, the RTC of Parañaque City, Branch 274, granted the complaint, the dispositive portion of which reads:

Wherefore, all the foregoing considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the defendants to pay solidarily and or jointly the plaintiff the following:

- 1) ₱90,000.00 for hospitalization expenses, ₱41,242.76 for other medical expenses;
- 2) ₱1,000,000.00 for and as moral damages;
- 3) ₱100,000.00 for exemplary damages;
- 4) ₱50,000.00 for and as attorney's fee; ₱1,000.00 appearance fee for every hearing;
- 5) Costs of suit.

SO ORDERED.¹²

The RTC accorded full weight and credence to Fidel's testimony which categorically identified Ontuca as the driver of the Harabas when it ran over his right leg. The RTC also brushed aside Ontuca's bare denial that it was Bautista and not him who drove the Harabas for being baseless and self-serving.

¹⁰ Records, Vol. I, pp. 63-69.

¹¹ CA rollo, pp. 119-127.

¹² Id. at 126-127.

Ruling of the CA

On appeal, the CA rendered the Decision¹³ dated October 6, 2008 affirming the findings of the RTC, the decretal portion of which states:

WHEREFORE, the DECISION DATED DECEMBER 29, 2003 is AFFIRMED, subject to the MODIFICATIONS that the award for hospitalization is adjusted to P71,064.00 and the award of moral damages is decreased to P1,500,000.00.

Costs of suit to be paid by the appellants.

SO ORDERED.¹⁴

According to the CA, Fidel's testimony preponderantly proved that it was Ontuca who took over the steering wheel of the Harabas when Bautista abandoned the said vehicle after the first impact. The CA also considered Fidel's account of the events¹⁵ to have clearly specified and segregated the roles of Bautista and Ontuca as the guilty drivers of the Harabas, viz:

In the case of Bautista, his intoxication and deficient driving experience increased the danger of causing injury to others. He also employed excessive or inordinate speed, as evidenced by the extensive frontal damage sustained by the vehicle depicted in the pictorial evidence in the records. **As such, Bautista was recklessly imprudent, because he ought to have known of the increased risks of his driving causing injury to others but still persisted in driving the vehicle.**

In the case of Ontuca, his being the authorized driver of the vehicle should have moved him to adopt firmer steps to prevent Bautista from operating the vehicle. He should not have contented himself with mere pleading to regain the wheel from the stubborn Bautista. Besides, **Ontuca's insistence on being intimidated by Bautista did not impress the trial court; neither does it now impress us, for, we find it difficult to comprehend why he did not drive the vehicle away as soon as Bautista had entered the clinic, leaving him alone in the vehicle.** Equally difficult to accept is his claim of being threatened with serious harm by Bautista, because if that was true, how come he did not seek the assistance of others, particularly the police authority to fend off the threat, once Bautista had left him alone in the vehicle. Then, following Bautista's flight from the scene after hitting Fidel, **Ontuca worsened the victim's fate by running over his right leg twice. Clearly, the liability of Ontuca for negligence emanated from his being the authorized driver of the Harabas vehicle and from his voluntary act of carelessly operating the vehicle when it ran over and crushed the right leg of Fidel.**¹⁶ (Citation omitted and emphases ours)

¹³ Id. at 259-281.

¹⁴ Id. at 281.

¹⁵ Id. at 265-267.

¹⁶ Id. at 267-268.

The CA further reduced the hospitalization expense from ₱90,000.00 to ₱71,064.00 as the actual amount due Fidel while it increased the amount of moral damages from ₱1,000,000.00 to ₱1,500,000.00 anchored on Fidel's psychological pain, damage and injury. As held by the CA:

A prosthetic device, however technologically advanced, will only allow a reasonable amount of functional restoration of the motor functions of the lower limb. The sensory functions are forever lost. The resultant anxiety, sleeplessness, psychological injury, mental and physical pain are inestimable.¹⁷

Prudencio's motion for reconsideration was partly granted in the CA's Resolution¹⁸ dated June 23, 2009 only as to the reinstated amount of ₱1,000,000.00 as moral damages.

Hence, this appeal.

The appeal is bereft of merit.

Article 2184 of the Civil Code provides:

Art. 2184. In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of the due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable.

The pertinent portion of Article 2180, on the other hand, provides:

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

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.

x x x x

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. (Emphasis ours)

¹⁷

Id. at 280, citing *Valenzuela v. CA*, 323 Phil. 374, 400 (1996).

¹⁸

Id. at 345-347.

Article 2176 of the Civil Code reads:

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.

Although solidary liability is not explicitly provided in the said provisions, the wordings of Article 2180 of the Civil Code infer that *the obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.* Article 2180 and Article 2194 categorically provide that *the responsibility of two or more persons who are liable for quasi-delict is solidary.* In other words, the liability of joint tortfeasors is solidary. Verily, under Article 2180, an employer may be held solidarily liable for the negligent act of his employee.¹⁹

Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees. To avoid liability for a quasi-delict committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee.²⁰

Whether a person is negligent or not is a question of fact which the Court cannot pass upon in a petition for review on *certiorari*, as the Court's jurisdiction is limited to reviewing errors of law.²¹ It is well-settled that findings of the trial court, especially when affirmed by the CA, are conclusive on this Court when supported by the evidence on record.²²

The Court has carefully perused over the records of this case, and found no cogent reason to reverse the findings of the trial court and the CA, thus:

Between the positive testimony of an 11-year old boy victim and the self-serving but vacillating denial in this regard of defendant Ontuca who the Court finds to have the inclination of lying and being inconsistent, the Court considers the former to be more believable. Although in the previous criminal case involving the same incident, this Court had acquitted then accused Ontuca of the crime of frustrated murder, that finding was based on insufficient evidence on the part of the prosecution to prove the guilt of the accused beyond reasonable doubt. **Not so in this civil case. There is already ample albeit preponderant evidence establishing the fact that defendant Ontuca was then driving**

¹⁹ *Spouses Hernandez v. Spouses Dolor*, 479 Phil. 593, 603 (2004).

²⁰ *Macalinao v. Ong*, 514 Phil. 127, 142-143 (2005).

²¹ *Estacion v. Bernardo*, 518 Phil. 388, 398 (2006).

²² *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 586.

the Harabas vehicle when it hit twice the victim, herein plaintiff Fidel Berog. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. x x x.²³ (Emphases in the original)

An employer-employee relationship exists between Prudencio and Ontuca on April 22, 1994.

The Court agrees with the CA's pronouncement that Prudencio cannot deny being Ontuca's employer on April 22, 1994. It is clearly evident in the records that Ontuca was authorized by Prudencio to drive the Harabas because he could trust him²⁴ which Ontuca confirmed.²⁵ Also, Prudencio cannot avoid liability on the basis of the registration of Felisa's ownership over the Harabas as it was shown he had been entrusted with it when she left for abroad. Prudencio's written complaint in the *barangay* also contained his signature as Felisa's "authorized representative." He also has control of its use. The CA emphasized that the operator of record continues to be the operator of the vehicle in contemplation of law, as regards the public and third person, and is responsible for the consequences incident to the vehicle's operation, and who should be held out as the employer of the driver. To give effect to this policy, the actual operator and employer shall be considered as the agent of the operator of record.²⁶ Thus, Felisa and Prudencio, as such employers, share a vicarious liability for the negligent use of the Harabas for failing to establish their having exercised the diligence of a good father of a family in the selection and supervision of employee.²⁷ They are both liable to Fidel: Felisa, as registered owner, and Prudencio, who, without being the registered owner, had control of the use of the vehicle.²⁸

In an obvious ploy to relieve himself from liability, Prudencio argued that Fidel is not entitled to damages. His claim is anchored on the argument that the filing of the complaint against him was a mere afterthought in view of Bautista's acquittal in the criminal case Fidel filed against him. As correctly ratiocinated by the CA, Fidel was likely to be still confused about the circumstances of his severe injuries when he testified in the criminal case against Bautista and had successfully overcome the same at the time when he testified in the civil case for damages for a young witness like him is not expected to remember every detail with perfect recollection.²⁹

²³ CA rollo, p. 268.

²⁴ Id. at 270.

²⁵ Id.

²⁶ Id. at 274, citing *Villanueva v. Domingo*, 481 Phil. 837, 849-850 (2004).

²⁷ Id. at 275.

²⁸ Id. at 271-272.

²⁹ Id. at 268-269.

Anent the damages awarded, the Court agrees with the CA's modification when it reduced the amount of hospitalization expenses from ₱90,000.00 to ₱71,064.00, the latter amount being the actual hospital expense due Fidel. The CA also correctly sustained the amount of ₱41,242.76 as medical expenses as substantiated by receipts, due to the physical injuries suffered by the victim, thereby, yielding a total of ₱112,307.36 in actual damages.³⁰

The CA also correctly reinstated the amount of moral damages of ₱1,000,000.00. It has been held that moral damages may be recovered in quasi-delicts causing physical injuries.³¹ And that, while moral damages are not intended to enrich the plaintiff at the expense of the defendant, the award should nonetheless be commensurate to the suffering inflicted.³²

Here, the amount of ₱1,000,000.00 as moral damages granted by the trial court, as reinstated by the CA on motion for reconsideration, is in greater accord with the extent and nature of the physical and psychological injuries suffered by Fidel as a result of Ontuca's grossly negligent driving of Harabas. The damage done to him such as the loss of his right leg is not only permanent and lasting but would likewise permanently alter and adjust to the physiological changes that his body would normally undergo as he matures. Thus, the affirmance of said amount is just and proper.

"Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence."³³ In the case-at-bench, the loss of Fidel's right leg is undeniably caused by Ontuca's gross negligence in recklessly driving the Harabas. The grant of exemplary damages in cases such as this serves as a warning to the public and as a deterrent against the repetition of this kind of deleterious actions.³⁴ Thus, the Court agrees with the CA's affirmance of ₱100,000.00 exemplary damages awarded to Fidel.

In line with Article 2208³⁵ of the Civil Code, the award of ₱50,000.00 as attorney's fees is also proper.

³⁰ Id. at 277.

³¹ Civil CODE OF THE PHILIPPINES, Article 2219(2).

³² *Valenzuela v. CA*, supra note 17, at 399.

³³ *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 485.

³⁴ *Cebu Country Club, Inc., et al. v. Elizagaque*, 566 Phil. 65, 75-76 (2008).



³⁵ Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded[.]

x x x x

WHEREFORE, in consideration of the foregoing premises, the Decision dated October 6, 2008 and Resolution dated June 23, 2009 of the Court of Appeals in CA-G.R. CV No. 81698 are **AFFIRMED.**" (Jardeleza, J., on official leave; Mendoza, J., designated as acting member per Special Order No. 1896 dated November 28, 2014.)

Very truly yours,


WILFREDO V. LAPITAN
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