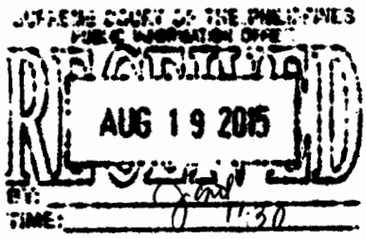
b.

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **July 29, 2015** *which reads as follows:*

"G.R. No. 217928 (National Transmission Corporation, *petitioner*, *v.* Leslie L. De Jesus, Virgilio De Jesus and Estrella C. De Jesus, *respondents*.). – The petitioner's motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 101721 dated 26 January 2015 and 6 April 2015, respectively.

On 7 November 2008, respondents filed a Complaint for Damages based on *quasi-delict* against petitioner (being the employer of the late Baby John De Jesus) before the Regional Trial Court (RTC), Branch 80 of Quezon City, alleging that as heirs of the late Baby John De Jesus employed as Lineman II by petitioner who died due to electrocution while performing a hotspot correction at Kalaklan Station due to the negligence of his foreman Danilo Manahan and of petitioner, they are entitled to various awards of damages. Subsequently, in the RTC Decision dated 31 July 2013, it ruled in favor of respondents declaring that petitioner was not able to prove that it exercised the diligence required by Article 2018 of the Civil Code of the Philippines since as reflected on and admitted in the Accident Investigation Report presented in evidence, it was declared that petitioner's hired foreman, Danilo Manahan, was assigned to supervise a task he was not familiar with, *i.e.* proper work sequence and coordination required therein.

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[1] *Rollo*, pp. 45-55; Penned by Associate Justice Franchito N. Diamante with Associate Justice Japar B. Dimaampao and Melchor Q.C. Sadang concurring.

Aggrieved, petitioner appealed before the CA alleging that the trial court erred: (a) in finding that the late Baby John De Jesus is entitled to various awards of damages despite compelling evidence that the accident was the result of his own fault; and (b) in finding that petitioner failed to exercise the diligence required of a good father of a family to negate the liability to the late Baby John De Jesus.

The appellate court rendered the assailed Decision dated 26 January 2015 which affirmed with modification the RTC ruling as follows:

> **WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DENIED**. The assailed Decision dated July 31, 2013 rendered by the Quezon City RTC – Branch 80 in Civil Case No. Q-08-63745 is **AFFIRMED** with **MODIFICATIONS**. Defendant National Transmission Corporation is hereby **ORDERED** to pay plaintiffs the following:
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> | | |
> |---|---|
> | 1. Loss of Earning Capacity | P5,088,204.00 |
> | 2. Actual Damages | 72,750.00 |
> | 3. Moral Damages | 100,000.00 |
> | 4. Indemnity for the death of Baby John De Jesus | 50,000.00 |
> | 5. Attorney's Fees | 50,000.00 |
>
> Actual payment of the aforesaid amounts should, however, be reduced by twenty (20%) percent due to the presence of contributory negligence on the part of the victim as provided for in Article 2179 of the Civil Code of the Philippines.[2]

Petitioner's motion for reconsideration of said Decision was likewise denied in the 6 April 2015 Resolution[3] of the appellate court.

Hence, this appeal raising the primordial issue of whether or not the CA erred in affirming with modification the ruling of the RTC based on the latter's factual and legal findings.

We find the instant petition without merit.

2 Id. at 54-55.
3 Id. at 57-58.

At the outset, it is well-settled that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[4] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court[5] – and they carry even more weight when the CA affirms the factual findings of the trial court.[6]

Be that as it may, based on the factual findings as duly supported by documentary and testimonial evidence presented and submitted before the court *a quo*, this Court agrees with the CA's pronouncement that there was indeed legal basis to declare that petitioner failed to exercise the diligence of a good father of the family required under the Civil Code of the Philippines in the supervision of its employees. Noticeably, both the RTC and CA based their conclusions on the Accident Investigation Report prepared and identified by petitioner's own Regional Safety Engineer/Designated Safety Engineer who noted that there was indeed "insufficient coordination of work" during the unfortunate incident, and by the testimony of petitioner's own Senior H.R. Analyst who narrated that upon request for a grounding cluster to protect himself, the late Baby John De Jesus was merely ordered by his foreman not to come down anymore and just proceed and continue to climb which resulted in the subject incident.

It bears emphasis that 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 his 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.[7]

Article 2180 of the Civil Code provides that "[e]mployers 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." Worthy to mention that the responsibility treated in the above-quoted article shall cease when the persons therein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

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4 *Salcedo v. People*, 400 Phil. 1302, 1304 (2000).
5 *The Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 85-86.
6 *Borromeo v. Sun*, 375 Phil. 595, 602 (1999).
7 *Macalinao v. Ong*, 514 Phil, 127, 142-143 (2005).

Clearly from the foregoing, the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee, there instantly arises a presumption of the law that there was negligence on the part of the employer, either in the selection of his employee or in the supervision over him after such selection. However, the presumption may be overcome by a clear showing on the part of the employer that he has exercised the care and diligence of a good father of a family in the selection and supervision of his employee. In other words, the burden of proof is on the employer.[8] Petitioner failed to overcome the presumption of negligence in the present case.

Lastly, we agree that failure on the part of the late Baby John De Jesus to use the required protective equipment was an act of negligence contributory to that unfortunate incident which led to his untimely death. He should have insisted for the said required grounding cluster notwithstanding his foreman's directive to proceed without it.

Accordingly, the CA was correct in affirming the RTC ruling finding petitioner liable to pay for the amount of damages awarded with the modification that it should be reduced by 20% in accordance with the pronouncements made in *Mendoza v. Soriano and Soriano*,[9] stating that:

> However, as there was contributory negligence on the part of De Jesus, mitigation of TRANSCO's liability for damages is in order. Article 2179 of the Civil Code of the Philippines is explicit that when the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. **But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded**. x x x[10] (Emphasis supplied)

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit.

SO ORDERED." **SERENO, *C.J.***, on official leave; **PERALTA, *J.***, acting member per S.O. No. 2103 dated July 13, 2015.

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

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8 *OMC Carriers Inc. et al. v. Nabua*, G.R. No. 148974, 2 July 2010, 622 SCRA 624, 634-635.
9 551 Phil. 693 (2007).
10 *Rollo*, p. 54; CA Decision.

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