

## FIRST DIVISION

[ G.R. No. 175512, May 30, 2011 ]

### **VALLACAR TRANSIT, INC., PETITIONER, VS. JOCELYN CATUBIG, RESPONDENT.**

### **D E C I S I O N**

For review under Rule 45 of the Rules of Court is the Decision<sup>[1]</sup> dated November 17, 2005 and the Resolution<sup>[2]</sup> dated November 16, 2006 of the Court Appeals in CA-G.R. CV No. 66815, which modified the Decision<sup>[3]</sup> dated January 26, 2000 of the Regional Trial Court (RTC), Branch 30 of Dumaguete City, in Civil Case No. 11360, an action for recovery of damages based on Article 2180, in relation to Article 2176, of the Civil Code, filed by respondent Jocelyn Catubig against petitioner Vallacar Transit, Inc. While the RTC dismissed respondent's claim for damages, the Court of Appeals granted the same.

The undisputed facts are as follows:

Petitioner is engaged in the business of transportation and the franchise owner of a *Ceres Bulilit* bus with Plate No. T-0604-1348. Quirino C. Cabanilla (Cabanilla) is employed as a regular bus driver of petitioner.

On January 27, 1994, respondent's husband, Quintin Catubig, Jr. (Catubig), was on his way home from Dumaguete City riding in tandem on a motorcycle with his employee, Teddy Emperado (Emperado). Catubig was the one driving the motorcycle. While approaching a curve at kilometers 59 and 60, Catubig tried to overtake a slow moving ten-wheeler cargo truck by crossing-over to the opposite lane, which was then being traversed by the *Ceres Bulilit* bus driven by Cabanilla, headed for the opposite direction. When the two vehicles collided, Catubig and Emperado were thrown from the motorcycle. Catubig died on the spot where he was thrown, while Emperado died while being rushed to the hospital.

On February 1, 1994, Cabanilla was charged with reckless imprudence resulting in double homicide in Criminal Case No. M-15-94 before the Municipal Circuit Trial Court (MCTC) of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental. After preliminary investigation, the MCTC issued a Resolution on December 22, 1994, dismissing the criminal charge against Cabanilla. It found that Cabanilla was not criminally liable for the deaths of Catubig and Emperado, because there was no negligence, not even contributory, on Cabanilla's part.

Thereafter, respondent filed before the RTC on July 19, 1995 a Complaint for Damages against petitioner, seeking actual, moral, and exemplary damages, in the total amount of P484,000.00, for the death of her husband, Catubig, based on Article 2180, in relation to Article 2176, of the Civil Code. Respondent alleged that petitioner is civilly liable because the latter's employee driver, Cabanilla, was reckless and negligent in driving the bus which collided with Catubig's motorcycle.

Petitioner, in its Answer with Counterclaim, contended that the proximate cause of the vehicular collision, which resulted in the deaths of Catubig and Emperado, was the sole negligence of Catubig when he imprudently overtook another vehicle at a curve and traversed the opposite lane of the road. As a special and affirmative defense, petitioner asked for the dismissal of respondent's complaint for not being verified and/or for failure to state a cause of action, as there was no allegation that petitioner was negligent in the selection or supervision of its employee driver.

In the Pre-Trial Order<sup>[4]</sup> dated June 10, 1997, the parties stipulated that the primary issue for trial was whether or not petitioner should be held liable for Catubig's death. Trial then ensued.

Police Officer (PO) 2 Robert B. Elnas (Elnas),<sup>[5]</sup> Emilio Espiritu (Espiritu),<sup>[6]</sup> Dr. Norberto Baldado, Jr. (Dr. Baldado),<sup>[7]</sup> Peter Cadimas (Cadimas),<sup>[8]</sup> and respondent<sup>[9]</sup> herself testified in support of respondent's complaint.

PO2 Elnas conducted an investigation of the collision incident. According to PO2 Elnas, the bus was running fast, at a speed of 100 kilometers per hour, when it collided with the motorcycle which was trying to overtake a truck. The collision occurred on the lane of the bus. Catubig was flung 21 meters away, and Emperado, 11 meters away, from the point of impact. The motorcycle was totaled; the chassis broke into three parts, and the front wheel and the steering wheel with the shock absorbers were found 26 meters and 38 meters, respectively, from the collision point. In contrast, only the front bumper of the bus suffered damage.

Cadimas personally witnessed the collision of the bus and the motorcycle. He recalled that he was then waiting for a ride to Dumaguete City and saw the *Ceres Bulilit* bus making a turn at a curve. Cadimas signaled the said bus to halt but it was running fast. Cadimas also recollected that there was a cargo truck running slow in the opposite direction of the bus. Cadimas next heard a thud and saw that the bus already collided with a motorcycle.

Espiritu was the photographer who took photographs of the scene of the accident. He identified the five photographs which he had taken of Catubig lying on the ground, bloodied; broken parts of the motorcycle; and the truck which Catubig tried to overtake.

Dr. Baldado was the medico-legal doctor who conducted the post-mortem examination of Catubig's body. He reported that Catubig suffered from the following injuries: laceration and fracture of the right leg; laceration and fracture of the left elbow; multiple abrasions in the abdominal area, left anterior chest wall, posterior right arm, and at the back of the left scapular area; and contusion-hematoma just above the neck. Dr. Baldado confirmed that Catubig was already dead when the latter was brought to the hospital, and that the vehicular accident could have caused Catubig's instantaneous death.

Respondent herself testified to substantiate the amount of damages she was trying to recover from petitioner for Catubig's death, such as Catubig's earning capacity; expenses incurred for the wake and burial of Catubig, as well as of Emperado; the cost of the motorcycle; and the costs of the legal services and fees respondent had

incurred.

Respondent's documentary exhibits consisted of her and Catubig's Marriage Contract dated August 21, 1982, their two children's Certificate of Live Births, Catubig's College Diploma dated March 24, 1983, the list and receipts of the expenses for Catubig's burial, the sketch of the collision site prepared by PO2 Elnas, the excerpts from the police blotter, the photographs of the collision,<sup>[10]</sup> and the Post Mortem Report<sup>[11]</sup> on Catubig's cadaver prepared by Dr. Baldado.

In an Order<sup>[12]</sup> dated October 6, 1998, the RTC admitted all of respondent's aforementioned evidence.

On the other hand, Rosie C. Amahit (Amahit)<sup>[13]</sup> and Nunally Maypa (Maypa)<sup>[14]</sup> took the witness stand for petitioner.

Amahit was a Court Stenographer at the MCTC who took the transcript of stenographic notes (TSN) in Criminal Case No. M-15-94 against Cabanilla. Amahit verified that the document being presented by the defense in the present case was a true and correct copy of the TSN of the preliminary investigation held in Criminal Case No. M-15-94 on May 25, 1994, and another document was a duplicate original of the MCTC Resolution dated December 22, 1994 dismissing Criminal Case No. M-15-94.

Maypa is the Administrative and Personnel Manager at the Dumaguete branch of petitioner. He started working for petitioner on September 22, 1990 as a clerk at the Human Resources Development Department at the Central Office of petitioner in Bacolod City. Sometime in November 1993, he became an Administrative Assistant at the Dumaguete branch of petitioner; and in August 1995, he was promoted to his current position at the same branch.

While he was still an Administrative Assistant, Maypa was responsible for the hiring of personnel including drivers and conductors. Maypa explained that to be hired as a driver, an applicant should be 35 to 45 years old, have at least five years experience in driving big trucks, submit police, court, and medical clearances, and possess all the necessary requirements for driving a motor vehicle of more than 4,500 kilograms in gross weight such as a professional driver's license with a restriction code of 3. The applicant should also pass the initial interview, the actual driving and maintenance skills tests, and a written psychological examination involving defensive driving techniques. Upon passing these examinations, the applicant still had to go through a 15-day familiarization of the bus and road conditions before being deployed for work. Maypa, however, admitted that at the time of his appointment as Administrative Assistant at the Dumaguete branch, Cabanilla was already an employee driver of petitioner.

Maypa further explained the investigation and grievance procedure followed by petitioner in cases of vehicular accidents involving the latter's employee drivers. Maypa related that Cabanilla had been put on preventive suspension following the vehicular accident on January 27, 1994 involving the bus Cabanilla was driving and the motorcycle carrying Catubig and Emperado. Following an internal investigation of said accident conducted by petitioner, Cabanilla was declared not guilty of causing the same, for he had not been negligent.

Lastly, Maypa recounted the expenses petitioner incurred as a result of the present litigation.

The documentary exhibits of petitioner consisted of the TSN of the preliminary investigation in Criminal Case No. M-15-94 held on May 25, 1994 before the MCTC of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental; Resolution dated December 22, 1994 of the MCTC in the same case; and the Minutes dated February 17, 1994 of the Grievance Proceeding conducted by petitioner involving Cabanilla.  
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The RTC, in its Order<sup>[16]</sup> dated November 12, 1999, admitted all the evidence presented by petitioner.

On January 26, 2000, the RTC promulgated its Decision favoring petitioner. Based on the sketch prepared by PO2 Elnas, which showed that "the point of impact x x x occurred beyond the center lane near a curve within the lane of the Ceres bus[;]"  
[17] plus, the testimonies of PO2 Elnas and Cadimas that the motorcycle recklessly tried to overtake a truck near a curve and encroached the opposite lane of the road, the RTC ruled that the proximate cause of the collision of the bus and motorcycle was the negligence of the driver of the motorcycle, Catubig. The RTC, moreover, was convinced through the testimony of Maypa, the Administrative and Personnel Manager of the Dumaguete branch of petitioner, that petitioner had exercised due diligence in the selection and supervision of its employee drivers, including Cabanilla.

After trial, the RTC concluded:

WHEREFORE, finding preponderance of evidence in favor of the [herein petitioner] that the [herein respondent's] husband is the reckless and negligent driver and not the driver of the [petitioner], the above-entitled case is hereby ordered dismissed.

[Petitioner's] counterclaim is also dismissed for lack of merit.<sup>[18]</sup>

Respondent appealed to the Court of Appeals. In its Decision dated November 17, 2005, the appellate court held that both Catubig and Cabanilla were negligent in driving their respective vehicles. Catubig, on one hand, failed to use reasonable care for his own safety and ignored the hazard when he tried to overtake a truck at a curve. Cabanilla, on the other hand, was running his vehicle at a high speed of 100 kilometers per hour. The Court of Appeals also brushed aside the defense of petitioner that it exercised the degree of diligence exacted by law in the conduct of its business. Maypa was not in a position to testify on the procedures followed by petitioner in hiring Cabanilla as an employee driver considering that Cabanilla was hired a year before Maypa assumed his post at the Dumaguete branch of petitioner.

Thus, the Court of Appeals decreed:

WHEREFORE, based on the foregoing, the assailed decision of the trial court is modified. We rule that [herein petitioner] is equally liable for the accident in question which led to the deaths of Quintin Catubig, Jr. and Teddy Emperado and hereby award to the heirs of Quintin Catubig, Jr. the

amount [of] P250,000.00 as full compensation for the death of the latter.

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The Court of Appeals denied the motion for reconsideration of petitioner in a Resolution dated November 16, 2006.

Hence, the instant Petition for Review.

Petitioner asserts that respondent's complaint for damages should be dismissed for the latter's failure to verify the same. The certification against forum shopping attached to the complaint, signed by respondent, is not a valid substitute for respondent's verification that she "has read the pleading and that the allegations therein are true and correct of her personal knowledge or based on authentic records."<sup>[20]</sup> Petitioner cited jurisprudence in which the Court ruled that a pleading lacking proper verification is treated as an unsigned pleading, which produces no legal effect under Section 3, Rule 7 of the Rules of Court.

Petitioner also denies any vicarious or imputed liability under Article 2180, in relation to Article 2176, of the Civil Code. According to petitioner, respondent failed to prove the culpability of Cabanilla, the employee driver of petitioner. There are already two trial court decisions (*i.e.*, the Resolution dated December 22, 1994 of the MCTC of Manjuyod-Bindoy-Ayungon of the Province of Negros Oriental in Criminal Case No. M-15-94 and the Decision dated January 26, 2000 of the RTC in the instant civil suit) explicitly ruling that the proximate cause of the collision was Catubig's reckless and negligent act. Thus, without the fault or negligence of its employee driver, no liability at all could be imputed upon petitioner.

Petitioner additionally argues, without conceding any fault or liability, that the award by the Court of Appeals in respondent's favor of the lump sum amount of P250,000.00 as total death indemnity lacks factual and legal basis. Respondent's evidence to prove actual or compensatory damages are all self-serving, which are either inadmissible in evidence or devoid of probative value. The award of moral and exemplary damages is likewise contrary to the ruling of the appellate court that Catubig should be equally held liable for his own death.

Respondent maintains that the Court of Appeals correctly adjudged petitioner to be liable for Catubig's death and that the appellate court had already duly passed upon all the issues raised in the petition at bar.

The petition is meritorious.

At the outset, we find no procedural defect that would have warranted the outright dismissal of respondent's complaint.

Respondent filed her complaint for damages against petitioner on July 19, 1995, when the 1964 Rules of Court was still in effect. Rule 7, Section 6 of the 1964 Rules of Court provided:

Sec. 6. *Verification.*--A pleading is verified only by an affidavit stating that the person verifying has read the pleading and that the allegations thereof are true of his own knowledge.