

## THIRD DIVISION

**[ G.R. No. 163078, November 25, 2009 ]**

**STEPHEN CANG AND GEORGE NARDO Y JOSOL, PETITIONERS,  
VS. HERMINIA CULLEN, RESPONDENT.**

### DECISION

**NACHURA, J.:**

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> dated December 2, 2002 and the Resolution<sup>[2]</sup> dated February 23, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69841. In the assailed Decision, the CA reversed and set aside the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Cebu, Branch 22, in Civil Case No. CEB-20504, an action for damages.

The claim for damages was precipitated by a vehicular accident involving a taxicab bearing Plate No. GVG-672, owned by petitioner Stephen Cang and driven by petitioner George Nardo, and a motorcycle owned by respondent Herminia Cullen and driven by Guillermo Saycon.

On October 29, 1996, at about 3:10 p.m., Saycon was driving the Honda motorcycle, with Plate No. LLC-A-4589, along P. del Rosario Street, Cebu City, occupying the middle portion of the outer lane. The taxi, on the other hand, was traveling on the inner lane and slightly behind, but to the left of, the motorcycle. Respondent alleged that between Sikatuna and D. Jakosalem Streets, the taxi veered to the right and sideswiped the motorcycle, then attempted to speed away. Peace officers near the scene flagged down the taxi. As a result of the collision, Saycon was seriously injured.<sup>[4]</sup>

Petitioners, meanwhile, claimed that it was the motorcycle that bumped into the taxi. Nardo narrated that he was driving the taxi on the inner lane (near the center island) along P. del Rosario St., moving towards the intersection of D. Jakosalem St. When the "caution" signal of the traffic light flashed, he immediately slowed down. It was at that point that the motorcycle bumped into the taxi's rear.<sup>[5]</sup>

Respondent, as employer, out of compassion, paid all of Saycon's hospital and medical expenses amounting to P185,091.00.<sup>[6]</sup> She also alleged that due to the injuries Saycon sustained, he was unable to work. For humanitarian reasons, respondent had given Saycon an amount equivalent to his wages from October 31, 1996 to May 30, 1997. She also gave Saycon P2,000.00 per month from June 1997 until he was able to return to work.<sup>[7]</sup>

On July 3, 1997, respondent filed a Complaint for damages against petitioners praying that judgment be rendered ordering the latter to pay, jointly and severally,

P205,091.00 in actual damages; P2,000.00 per month from June 1997 up to the time Saycon would be able to return to work, with 6% per annum interest from the date of extrajudicial demand; P50,000.00 as exemplary damages; 20% of the total amount by way of attorney's fees; P10,000.00 as acceptance fee; P500.00 per court appearance, as appearance fee; P20,000.00 as litigation expenses; and the cost of the suit.<sup>[8]</sup>

Petitioner Cang filed a Motion to Dismiss contending that the complaint violated Presidential Decree No. 1508, or the *Katarungang Pambarangay Law*. The motion was dismissed on September 24, 1997.<sup>[9]</sup>

Subsequently, petitioners filed their Answer with Counterclaims. Cang averred that Nardo was not driving the taxi as the former's employee, but that Nardo was leasing the taxi from him.<sup>[10]</sup> Petitioners also claimed that Nardo did not sideswipe the motorcycle driven by Saycon, nor did the latter speed away after the incident. They maintained that, at the time of the impact, Nardo's taxi was on its proper lane and that it was the motorcycle that veered into Nardo's lane and bumped the taxi.<sup>[11]</sup> Further, they alleged that after the impact, Nardo drove the taxi backward to where Saycon and the motorcycle were slumped on the road. He then alighted from the taxi. Meanwhile, two traffic enforcers had crossed the street. After examining Saycon's injuries, one of the enforcers ordered Nardo to bring the former to a hospital. Nardo hesitated for a moment because he wanted the enforcers to make a sketch of the accident first, to show the exact positions of the vehicles at the time of the accident. However, he was prevailed upon by the traffic enforcers to bring Saycon to the hospital. Hence, it was not true that Nardo attempted to speed away from the scene of the accident. Petitioner Cang also claimed that Saycon was driving the motorcycle without any protective headgear and that the latter was not authorized to drive the motorcycle since he only had a student's permit.<sup>[12]</sup> Petitioner Cang prayed that the complaint be dismissed for lack of merit, for lack of cause of action and for lack of legal capacity. He also prayed for the award of P50,000.00 as moral damages, P20,000.00 as exemplary damages, P10,000.00 as acceptance fee, P30,000.00 as attorney's fees, P20,000.00 as litigation expenses, and P1,000.00 per court appearance.<sup>[13]</sup>

After trial, the RTC ruled in petitioners' favor. In its Decision<sup>[14]</sup> dated January 31, 2000, the trial court disposed:

**WHEREFORE**, based upon the foregoing, judgment is hereby rendered in favor of the defendants. Plaintiffs (sic) complaint is hereby **dismissed**.

Defendants' counterclaims are likewise denied.

No pronouncement as to costs.

**SO ORDERED.**<sup>[15]</sup>

Respondent appealed the RTC Decision to the CA. On December 2, 2002, the CA promulgated the assailed Decision,<sup>[16]</sup> reversing the RTC Decision, to wit:

**WHEREFORE**, premises considered, the appealed decision dated January 31, 2000 of the Regional Trial Court of Cebu, Branch 22 is hereby **REVERSED and SET ASIDE**. Defendants-appellees are hereby ordered to pay plaintiff-appellant, jointly and severally[, ] the following:

1.) The sum of P166,197.08 as actual damages which were incurred for the hospitalization and other medical expenses of plaintiff-appellant's driver Guillermo Saycon; and

2.) The sum of P20,000.00 as exemplary damages.

**SO ORDERED.**<sup>[17]</sup>

Petitioners are now before this Court on Petition for Review seeking the reversal of the CA Decision and its Resolution denying their Motion for Reconsideration. They argue that the CA erred in reversing the judgment rendered by the trial court; in giving credence to the eyewitness' testimony of Ike Aldemita, that petitioner Nardo had overtaken the motorcycle driven by Saycon and, therefore, was the negligent party; and in awarding damages to respondent.<sup>[18]</sup>

The petition is meritorious.

We note that the present Petition raises questions of fact. Whether a person is negligent or not is a question of fact which we cannot ordinarily pass upon in a petition for review on *certiorari*, as our jurisdiction is limited to reviewing errors of law.<sup>[19]</sup>

However, although findings of fact of the CA are generally conclusive on this Court, this rule admits of the following exceptions:<sup>[20]</sup>

(1) the factual findings of the Court of Appeals and the trial court are contradictory;

(2) the findings are grounded entirely on speculation, surmises or conjectures;

(3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible;

(4) there is grave abuse of discretion in the appreciation of facts;

(5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;

(6) the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and

(8) the **findings of fact of the Court of Appeals are contrary to those of the trial court** or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

Thus, when there are conflicting findings of fact by the CA on one hand and by the trial court on the other, as in this case,<sup>[21]</sup> the Court may give due course to petitions raising factual issues by way of exception and only in the presence of extremely meritorious circumstances.<sup>[22]</sup>

Contrary to the CA's ruling, we find that the RTC correctly disregarded Aldemita's testimony. Between the RTC and the CA, it is the former's assessment of the witnesses' credibility that should control.<sup>[23]</sup>

The trial court gave little credence to Aldemita's testimony, upon its finding that:

On the other hand, multicab driver Aldemita contended that he saw everything. He said that the motorcycle and the taxi overtook him. He told the court during his testimony that the motorcycle was ahead of the taxi. He further said that the motorcycle was nearer him (TSN, February 13, 1998, Savellon, p. 4). The court finds him inconsistent. If both were ahead of him and the motorcycle was ahead of the taxi, then, the motorcycle could not be nearer him. Because if the motorcycle was indeed nearer him, then, it could not have been ahead of the taxi. But rather, the taxi was ahead of the motorcycle. But in a later testimony, he said that they were beside each other (TSN, Feb. 12, 1998, Savellon, p. 17).

He also said that both tried to pass the lane which would fit only two vehicles. He told the court that both vehicles were running fast - at a speed of more than 30 kph - when the motorcycle was hit by the taxi. It would seem to the court that both vehicles were racing each other. Aldemita further said that in trying to pass the motorcycle, the taxi hit the left handle bar of the motorcycle. The handle bar was twisted and the motorcycle fell down to the left side. But if the taxi was indeed to the left of the motorcycle and if it really swerved to the right and hit the motorcycle - the law of force would tell us that the motorcycle would fall to the right after impact. It is the most logical direction for the motorcycle to fall. If the taxi was indeed traveling at a fast speed when it hit the motorcycle, the impact would not have only caused a mere twisted handle and the motorcycle would not have only fallen on its side as claimed by Aldemita. High speed impact would have caused the motorcycle and its driver greater damage and would have dislocated them much farther away than where it fell in this case.

He claimed that he was more or less ten (10) meters from the site of the accident when it happened (TSN, Feb. 12, 1998, p. 12). The court can,

therefore, say that he was also quite far from the scene of the accident and could not be that certain as to what really happened.

Aldemita also said that he signaled the taxi driver to stop (TSN, Feb. 12, 1998, Savellon, p. 6). However, later when asked, he said he signaled the "policeman" to stop the taxi driver or not (sic). He also claimed that he was near (sic) the motorcyclist than the "policemen." He further claimed that he was there at the scene of the accident to help but later said he never saw the driver of the taxi (TSN, Feb. 12, 1998, Savellon, p. 17). The court finds this highly unusual for somebody who claimed to be at the scene of the accident not to see the driver who came out of his vehicle to reason out with the responding enforcers. He said he was the one who removed the motorcycle which pinned its driver and then helped carried (sic) the driver to the taxi as told by the "policeman" (TSN, Feb. 12, 1998, Savellon p. 7). But later, he said that somebody took his place in carrying the victim because there were already many people (TSN, Feb. 12, 1998, Savellon, p. 17). x x x.

x x x x

The court also cannot fail to notice the uncontroverted allegation of Nardo during his testimony that Aldemita was not the person (the multicab driver) he saw during the time of the accident. He claimed that the person who testified in court last February 12, 1998, was not the driver of the multicab who was at the scene of the accident that fateful night (sic) of October 29, 1996 (TSN, Aug. 24, 1998, Pieras, p. 12). Allegations and claims like this when not countered and disproved would certainly cast doubt on the credibility of the subject person and consequently, on his testimonies, too.

Based on the points, the court cannot help but find Aldemita's testimony as uncertain and filled with so many inconsistencies. They contradicted with each other at many instances. The court believes in either of the two possibilities -- Aldemita did not really actually and exactly see the whole incident or he was lying through his teeth. Thus, the court cannot give so much weight to his testimony.<sup>[24]</sup>

The CA failed to refute the trial court's detailed analysis of the events leading to the accident and what transpired thereafter. It merely said that the lower court should have considered Aldemita's eyewitness testimony.<sup>[25]</sup> The CA based its findings of the accident only on Aldemita's account. It failed to consider all the other testimonial and documentary evidence analyzed by the trial court, which substantially controverted Aldemita's testimony.

In contrast, the trial court found Nardo more credible on the witness stand. Thus:

During his testimonies, Nardo appeared to be consistent, sincere and certain in his statements. He appeared to be acknowledgeable (sic) in his work as a driver. He conveyed a definite degree of credibility when he