

THIRD DIVISION

[G.R. No. 183198, November 25, 2009]

**LUZ PALANCA TAN, PETITIONER, VS. JAM TRANSIT, INC.,
RESPONDENT.**

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court, seeking the reversal of the Decision^[2] dated June 2, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 89046 and the reinstatement of the Decision^[3] dated December 20, 2006 of the Regional Trial Court (RTC), Branch 27, Santa Cruz, Laguna in Civil Case No. SC-3838.

The antecedents are as follows--

In her Complaint, petitioner Luz Palanca Tan (Tan) alleged that she was the owner of a passenger-type jitney with plate number DKF-168. On March 14, 1997, at around 5:00 a.m., the said jitney figured in an accident at an intersection along Maharlika Highway, Barangay Bangyas, Calauan, Laguna, as it collided with a JAM Transit passenger bus bound for Manila, bearing plate number DVG-557 and body number 8030. The bus was driven by Eddie Dimayuga (Dimayuga).

At the time of the collision, Tan's jitney was loaded with quail eggs and duck eggs (*balot* and salted eggs). It was driven by Alexander M. Ramirez (Ramirez). Tan alleged that Dimayuga was reckless, negligent, imprudent, and not observing traffic rules and regulations, causing the bus to collide with the jitney which was then, with care and proper light direction signals, about to negotiate a left turn towards the feeder or *barangay* road of Barangay Bangyas, Calauan, Laguna going to the Poblacion. The jitney turned turtle along the shoulder of the road and the cargo of eggs was destroyed. Ramirez and his helper were injured and hospitalized, incurring expenses for medical treatment at the *Pagamutang Pangmasa* in Bay, Laguna. Tan prayed for damages in the amount of P400,000.00 for the damaged jitney, P142,210.00 for the destroyed shipment, P20,000.00 for moral damages, attorney's fees of P20,000.00 plus P1,000.00 per court appearance of counsel, and other reliefs warranted under the premises.

In its Answer with Counterclaim, respondent JAM Transit, Inc. (JAM) admitted ownership of the subject passenger bus and that Dimayuga was under its employ. However, it denied the allegations in the Complaint, and claimed that the accident occurred due to the gross negligence of

Ramirez. As counterclaim, JAM sought payment of P100,000.00 for the damages sustained by the bus, P100,000.00 for loss of income, and P50,000.00 as attorney's fees plus P3,000.00 per court appearance of counsel.

After pretrial, trial on the merits ensued.

Tan proffered testimonial evidence, summarized by the RTC, and quoted by the CA, as follows:

LUZ PALANCA TAN, 47 years old, married, a resident of Sta. Cruz, Laguna and a businesswoman, testified to the facts stated in the complaint that: She is engaged in the business of nets and ropes, and egg dealership based [in] Santa Cruz, Laguna. She supplies her products to her customers [in] San Pablo and Lucena. On March 14, 1997, while at home, she was informed by her husband that one of their *jeepneys*, which was loaded with eggs, was bumped by a JAM Transit bus when the latter overtook the *jeepney*. The vehicle was driven by one Alexander Ramirez, who has one "Monching" as a companion. As a result of the accident, she incurred damages in the amount of P650,000.00 based on the following computation: P400,000.00 as actual damage sustained by the *jeepney*, from an estimate (Exhibit "D") furnished by Plantilla Motors; P142,000.00 for the lost value of the egg shipment, based on a certification issued by the Calauan Police Station; and P15,000.00, for the hospitalization and treatment of the driver and his companion. The *jeepney* is duly registered as evidenced by its registration receipt (Exhibit "G"). On cross examination, she testified that Ramirez, the *jeepney* driver when the accident occurred, was under her employ since 1993 and is still working for her.

On redirect, the plaintiff testified that prior to March 13, 1997, the day the accident happened, Ramirez has not met any vehicular accident and that it was only in the aforesaid date when he figured in one. On re-cross, she testified that she has no knowledge of Ramirez' prior experience as a driver. She did not ask Ramirez for his NBI or police clearance prior to her hiring the said driver. On additional redirect, the plaintiff testified that she is satisfied with the performance of Ramirez as a driver as he is kind.

ALEXANDER RAMIREZ, 35 years old, married, resident of Sta. Cruz, Laguna, and a driver testified that: He knows the plaintiff Luz Palanca Tan because she is his manager. He worked for her as a driver sometime in 1993. He sometimes drove a *jeepney* or a truck.

On March 13, 1997, at around 4:00 o'clock in the morning, he reported for work at his employer's warehouse located [in] Pagsawitan, Sta. Cruz. He got the passenger jeep loaded with salted eggs, "*balot*" and quail eggs for delivery to Lucena City upon instruction of Tan. In going to Lucena City, he chose to drive on the Maharlika Road at San Isidro, Brgy. Bangyas, Calauan, Laguna because it is better than the road along Brgy. Dayap of the same municipality. However, while at the Maharlika Road, he met an accident at around 5:00 a.m. The jitney turned turtle.

PO3 DANIEL C. ESCARES, 37 years old, married, resident of Calauan, Laguna, and a member of PNP-Calauan, Laguna, testified that: He was

on police duty as of March 14, 1997. On that day, he issued a certification (Exhibit "B") pertaining to a vehicular accident which occurred earlier. He came to know of the accident as relayed to their office by a concerned citizen. He proceeded to the place of the accident, which was at Maharlika Highway, in an intersection at Brgy. Bangyas, Calauan, Laguna for an investigation. Upon reaching the place, as a rule followed by police officers, he inquired from some of the residents about the incident. As relayed to him, the *jeepney* with Plate No. 168 was going towards the direction of San Isidro, followed by another *jeepney*, a truck and then by a JAM Transit bus. The bus overtook the *jeepney* it was following then side swept the *jeepney* (which figured in the accident) dragging it along ("*nakaladkad*") towards the sampaguita gardens.

[NOTE: The testimony of the witness regarding the information gathered was ordered by the Court to be deleted.] Then, he went personally to the place where the incident happened.

He stated it was cloudy that day. He described the highway where the incident happened as having a double straight yellow line which prohibits overtaking on both sides of the road. The said place is near the intersection of Maharlika Highway and the *barangay* road leading to Brgy. San Isidro.

On cross examination, he stated he cannot remember if he was with other police officers during the investigation of the incident but he can recall having interviewed a certain Mercy Ponteiros and one Rodel, who are both residents of the place.

On redirect, he stated that the witness Mercy Ponteiros is still residing at Brgy. Bangyas[.]

On additional direct examination, he stated that the accident site is still fresh in his mind and he drew a sketch (Exhibit "F" to "F-7") of the said place. He identified in the sketch the direction of the highway which leads to Manila and to Sta. Cruz, Laguna. The road, per his approximation, was about 10 meters wide, with the shoulder about 5 meters except that it was diminished to about 2 meters on account of some encroachment. The highway has a painted crosswalk. It also has a yellow line without any cut which means no vehicle could overtake from both sides of the road. He showed in the sketch the spot where the *jitney* and the bus were at the time of the incident. Shown the photographs (Exhibits "E" to "E-6"), he stated that they are truly reflective of the scene of the incident, the damages in both the *jeepney* and the bus, as of March 13, 1997.

On cross, he stated that what he saw was the situation after the incident. He came to learn of the accident at around 5:10 in the morning from a report received by their office, as relayed by a concerned citizen. He remembers that SPO4 Rogelio Medina, now retired, as one of his companions at the accident site. The site is about a kilometer away from their police station. He can recall the scene of the incident because of the photographs. The persons he investigated were the *jitney* driver, his "*pahinante*" (helper) and some people in the vicinity. He could not

remember the names of those persons but they were listed in the police blotter.

RODRIGO CONDINO, 38 years old, married, resident of Victoria, Laguna and a mechanic, testified that: He is a mechanic of Plantilla Motors at Bubucal, Sta. Cruz, Laguna. He knows the plaintiff Luz Tan as he and his chief (mechanic) repaired the *jeepney* owned by the latter after it figured in an accident on March 13, 1997. He came to know of the accident when the said vehicle was brought to their motor shop. They made an estimate (Exhibit "D") of the damage sustained by the said vehicle, which amounted to P450,000.00.^[4]

Tan also formally offered as exhibits the following documents:

Exhibit "A" - Articles of Incorporation of JAM Transit, Inc.;
Exhibit "B" - Certification issued by the Calauan Municipal Police Station regarding the vehicular accident;
Exhibit "C" - PNP-Calauan Police Report regarding the jitney shipment;
Exhibit "D" - Estimate of damages sustained by the jitney, from A. Plantilla Motors Repair Shop;
Exhibit "E" - Six (6) photographs depicting the site of the vehicular accident;
Exhibit "F" - Four (4) pages of receipts representing hospital and medical expenses paid by the plaintiff for injuries sustained by her driver and helper in the accident;
Exhibit "G" - Certificate of Registration of plaintiff's jitney;
Exhibit "H" - Driver's license of Eddie Dimayuga, defendant's bus driver;
Exhibit "I" - Sketch of the site where the vehicular accident occurred.^[5]

On the other hand, JAM offered the following testimonial evidence -

EDGARDO DIMAYUGA, 49 years old, married, resident of Sta. Cruz, Laguna and bus driver of JAM Transit Inc., testified that: He has been a passenger bus driver since 1983. He was previously employed with the Batangas Laguna Tayabas Bus Company (BLTB). He was employed with JAM Transit since 1992. He has a professional driver's license, D-12-78-008462562.

On March 14, 1997, he reported for work. He met an accident while driving a bus. The other vehicle involved, a jitney, belongs to Luz Palanca Tan and driven by Alexander Ramirez. The accident happened along the intersection of Maharlika Highway, Brgy. Bangyas at around 5:00 o'clock in the morning. He was driving the bus with a speed of 40 km/h when suddenly, a vehicle overtook the bus from the right side going to Calauan. He was not able to evade the vehicle as there was no way for him to do so. The front portion of the bus and the mirror were destroyed.

On cross examination, he stated that his route as of March 14, 1997 was Sta. Cruz-Lawton. He cannot recall the bus conductor who was on

Bangyas, Calauan. He stated he was not able to evade the jitney as there was no way for him to avoid the situation, causing the jitney to be dragged to the side. Nothing else happened after the bus hit the *jeepney*. He and other persons took the driver from the *jeepney* and brought him to a hospital.

On redirect, he stated that bus conductors change duties every two or three days.^[6]

JAM did not offer any documentary counter-evidence.

Applying the doctrine of *res ipsa loquitur*, the RTC found the JAM passenger bus driver at fault as he was then violating a traffic regulation when the collision took place. Thus, the RTC ruled in favor of Tan and disposed as follows--

WHEREFORE, judgment is hereby rendered against the defendants who are hereby adjudged to pay the plaintiff jointly and solidarily, the following:

1. actual damages of P142,210.00 for the lost and damaged cargoes; P400,000.00 for the destroyed jitney; P1,327.00 medical expenses of the jitney driver and his companion, for a total amount of [P543,537.00];
2. P10,000.00 as moral damages;
3. P10,000.00 as attorney's fees[;]
4. Costs of suit[.]

SO ORDERED.^[7]

Aggrieved, JAM appealed to the CA. The CA granted the appeal and dismissed the complaint on the ground that there was nothing on record that supported the RTC's finding that the JAM passenger bus was overtaking Tan's jitney. The CA noted that Ramirez only testified that, on March 14, 1997, he met an accident at around 5:00 a.m., while transporting eggs along Maharlika Road in San Isidro, Barangay Bangyas, Calauan, Laguna, causing the jitney he was driving to turn turtle. The CA also observed that the Certification (Exhibit "B") made no mention that the JAM passenger bus was overspeeding or that it was overtaking the jitney; and, thus, there was no evidence as to who between Ramirez and Dimayuga was negligent in connection with the vehicular accident. The CA held that the doctrine of *res ipsa loquitur* can only be invoked when direct evidence is nonexistent or not accessible. It further said that Tan had access to direct evidence as to the precise cause of the mishap, such that the circumstances of the vehicular accident or the specific act constituting the supposed negligence of Dimayuga could have been testified to by Ramirez or by the latter's companion. The CA concluded that *res ipsa loquitur* could not apply in this case because the doctrine does not dispense with the requirement of establishing proof of negligence.

Hence, this petition, with petitioner positing that the doctrine of *res ipsa loquitur* is applicable given the circumstances of the case.