

THIRD DIVISION

[G.R. NO. 134155, April 06, 2005]

**ANGELITO UY, PETITIONER, VS. PABLEO S. BALOJA,
RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Before us is this petition for review on certiorari of the **September 3, 1997 resolution^[1]** of the Court of Appeals which dismissed petitioner's appeal thereto for failure to file his appellant's brief within the reglementary period therefor, thereby effectively affirming an earlier decision of the Regional Trial Court at Cebu City, Branch 13, in an action for damages thereat commenced by respondent **Pableo S. Baloja** against herein petitioner **Antonio Uy**.

The facts:

At about 10:30 o'clock in the morning of March 18, 1990, respondent Pableo Baloja was on board a public utility *Fuzo Canter* jeep on his way to downtown Cebu City. While cruising at high speed along Gorordo Avenue, the jeepney lost its brake and turned left side down. As a result, Baloja sustained eight (8) broken ribs on the left side and a fractured left clavicle, rendering him completely paralyzed from the waist down.

On August 19, 1991, in the Regional Trial Court at Cebu City, Baloja filed a complaint^[2] for damages against petitioner Angelito Uy as owner and operator of the same vehicle, which complaint, thereat docketed as Civil Case No. 10628, was raffled to Branch 13 of the court.

In a decision^[3] dated July 28, 1994, the trial court rendered judgment for plaintiff Baloja ordering defendant Uy to pay the former the sum of P200,000.00 for loss of income and other damages, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay the former the sum of P200,000.00 for loss of income and another damages.

With cost against defendant.

SO ORDERED.

On August 5, 1994, petitioner filed a Notice of Appeal,^[4] therein making known to the trial court that he is elevating the case to the Court of Appeals.

On February 7, 1997,^[5] petitioner received a notice from the Court of Appeals requiring him to file his appeal brief within 45 days from said notice.

Petitioner failed to file his appellant's brief within the said 45-day period which expired on March 24, 1997.

Hence, and acting on the report of its Judicial Records Division that no appellant's brief has yet been filed even as late as "15 August 1997", the Court of Appeals, in a Resolution^[6] dated September 3, 1997, dismissed petitioner's appeal. We quote from the same Resolution:

Per report of the Judicial Records Division of this Court, the brief for defendant-appellant has not been filed as of 15 August 1997.

IN VIEW THEREOF, pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedures, this appeal is DISMISSED.

SO ORDERED.

In time, petitioner moved for a reconsideration,^[7] alleging that his failure to file his appellant's brief on time was due to the following:

"Despite efforts to locate the transcript of stenographic notes of the testimony of defendant-appellant given in the court below, as well as that of the testimony of Josefa Baloja (wife of plaintiff), and also that of Dr. Wyben Briones (the doctor), the same could not be located".

In a subsequent Resolution of May 9, 1998,^[8] the appellate court denied petitioner's motion for reconsideration, saying:

"If defendant-appellant could not locate copies of his aforementioned transcripts of stenographic notes, he could have come to this Court either personally or his lawyer to either request for zerox copies of the missing transcripts or in case of his lawyer, to read them. There was no attempt even on his part either himself or through his lawyer, to ask for extension of time to file the brief citing as reason therefor what he now claims in his present motion. Thus, his conduct can neither be treated as mistake or excusable negligence".

In the same resolution, the appellate court observed that the amount of P200,000.00 awarded by the trial court in favor of plaintiff Pableo S. Baloja "does not appear to be unconscionable".

Undaunted, petitioner is now before us via the instant recourse, invoking, in support thereof, the following grounds:

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Petitioner's procedural lapse of non-filing of appellants brief as required by the Honorable COURT OF APPEALS was humbly maintained as excusable neglect due to the failure to locate the transcript of stenographic notes of his testimony.