

## THIRD DIVISION

[ G.R. No. 120553, June 17, 1997 ]

**PHILTRANCO SERVICE ENTERPRISES, INC. AND ROGACIONES  
MANILHIG, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF  
THE LATE RAMON ACUESTA, RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

The petitioners interposed this appeal by way of a petition for review under Rule 45 of the Rules of Court from the 31 January 1995 Decision of the Court of Appeals in CA-G.R. CV No. 41140<sup>[1]</sup> affirming the 22 January 1993<sup>[2]</sup> Decision of Branch 31 of the Regional Trial Court, Calbayog City, in Civil Case No. 373, which ordered the petitioners to pay the private respondents damages as a result of a vehicular accident.

Civil Case No. 373 was an action against herein petitioners for damages instituted by the heirs of Ramon A. Acuesta, namely, Gregorio O. Acuesta; Julio O. Acuesta; Ramon O. Acuesta, Jr.; Baltazar O. Acuesta; Rufino O. Acuesta; Maximo O. Acuesta; Neri O. Acuesta; Iluminada O. Acuesta; Rosario Acuesta-Sanz; and Pamfilo O. Acuesta. Atty. Julio O. Acuesta also appeared as counsel for the plaintiffs (herein private respondents).<sup>[3]</sup> The private respondents alleged that the petitioners were guilty of gross negligence, recklessness, violation of traffic rules and regulations, abandonment of victim, and attempt to escape from a crime.

To support their allegations, the private respondents presented eight witnesses. On 10 February 1992, after the cross-examination of the last witness, the private respondents' counsel made a reservation to present a ninth witness. The case was then set for continuation of the trial on 30 and 31 March 1992. Because of the non-appearance of the petitioners' counsel, the 30 March 1992 hearing was cancelled. The next day, private respondents' counsel manifested that he would no longer present the ninth witness. He thereafter made an oral offer of evidence and rested the case. The trial court summarized private respondents' evidence in this wise:

[I]n the early morning of March 24, 1990, about 6:00 o'clock, the victim Ramon A. Acuesta was riding in his easy rider bicycle (Exhibit 'O'), along the Gomez Street of Calbayog City. The Gomez Street is along the side of Nijaga Park. On the Magsaysay Blvd., also in Calbayog City, defendant Philtranco Service Enterprises, Inc. (Philtranco for brevity) Bus No. 4025 with plate No. EVA-725 driven by defendant Rogaciones Manilhig y Dolira was being pushed by some persons in order to start its engine. The Magsaysay Blvd. runs perpendicular to Gomez St. and the said Philtranco bus 4025 was heading in the general direction of the said Gomez Street. Some of the persons who were pushing the bus were on its back, while

the others were on the sides. As the bus was pushed, its engine started thereby the bus continued on its running motion and it occurred at the time when Ramon A. Acuesta who was still riding on his bicycle was directly in front of the said bus. As the engine of the Philtranco bus started abruptly and suddenly, its running motion was also enhanced by the said functioning engine, thereby the subject bus bumped on the victim Ramon A. Acuesta who, as a result thereof fell and, thereafter, was run over by the said bus. The bus did not stop although it had already bumped and ran [sic] over the victim; instead, it proceeded running towards the direction of the Rosales Bridge which is located at one side of the Nijaga Park and towards one end of the Gomez St., to which direction the victim was then heading when he was riding on his bicycle. P/Sgt. Yabao who was then jogging thru the Gomez Street and was heading and meeting the victim Ramon A. Acuesta as the latter was riding on his bicycle, saw when the Philtranco bus was being pushed by some passengers, when its engine abruptly started and when the said bus bumped and ran over the victim. He approached the bus driver defendant Manilhig herein and signalled to him to stop, but the latter did not listen. So the police officer jumped into the bus and introducing himself to the driver defendant as policeman, ordered the latter to stop. The said defendant driver stopped the Philtranco bus near the Nijaga Park and Sgt. Yabao thereafter, told the driver to proceed to the Police Headquarter which was only 100 meters away from Nijaga Park because he was apprehensive that the said driver might be harmed by the relatives of the victim who might come to the scene of the accident. Then Sgt. Yabao cordoned the scene where the vehicular accident occurred and had P/Cpl. Bartolome Bagot, the Traffic Investigator, conduct an investigation and make a sketch of the crime scene. Sgt. Yambao Yabao was only about 20 meters away when he saw the bus of defendant Philtranco bumped [sic] and [sic] ran over the victim. From the place where the victim was actually bumped by the bus, the said vehicle still had run to a distance of about 15 meters away.<sup>[4]</sup>

For their part, the petitioners filed an Answer<sup>[5]</sup> wherein they alleged that petitioner Philtranco exercised the diligence of a good father of a family in the selection and supervision of its employees, including petitioner Manilhig who had excellent record as a driver and had undergone months of rigid training before he was hired. Petitioner Manilhig had always been a prudent professional driver, religiously observing traffic rules and regulations. In driving Philtranco's buses, he exercised the diligence of a very cautious person.

As might be expected, the petitioners had a different version of the incident. They alleged that in the morning of 24 March 1990, Manilhig, in preparation for his trip back to Pasay City, warmed up the engine of the bus and made a few rounds within the city proper of Calbayog. While the bus was slowly and moderately cruising along Gomez Street, the victim, who was biking towards the same direction as the bus, suddenly overtook two tricycles and swerved left to the center of the road. The swerving was abrupt and so sudden that even as Manilhig applied the brakes and blew the bus horn, the victim was bumped from behind and run over by the bus. It was neither willful nor deliberate on Manilhig's part to proceed with the trip after his bus bumped the victim, the truth being that when he looked at his rear-view window, he saw people crowding around the victim, with others running after his

bus. Fearing that he might be mobbed, he moved away from the scene of the accident and intended to report the incident to the police. After a man boarded his bus and introduced himself as a policeman, Manilhig gave himself up to the custody of the police and reported the accident in question.

The petitioners further claimed that it was the negligence of the victim in overtaking two tricycles, without taking precautions such as seeing first that the road was clear, which caused the death of the victim. The latter did not even give any signal of his intention to overtake. The petitioners then counterclaimed for P50,000 as and for attorney's fees; P1 million as moral damages; and P50,000 for litigation expenses.

However, the petitioners were not able to present their evidence, as they were deemed to have waived that right by the failure of their counsel to appear at the scheduled hearings on 30 and 31 March 1992. The trial court then issued an Order<sup>[6]</sup> declaring the case submitted for decision. Motions for the reconsideration of the said Order were both denied.

On 22 January 1992, the trial court handed down a decision ordering the petitioners to jointly and severally pay the private respondents the following amounts:

- 1) P55, 615.72 as actual damages;
- 2) P200,000 as death indemnity for the death of the victim Ramon A. Acuesta;
- 3) P1 million as moral damages;
- 4) P500,000 by way of exemplary damages;
- 5) P50,000 as attorney's fees; and
- 6) the costs of suit.<sup>[7]</sup>

Unsatisfied with the judgment, the petitioners appealed to the Court of Appeals imputing upon the trial court the following errors:

- (1) in preventing or barring them from presenting their evidence;
- (2) in finding that petitioner Manilhig was at fault;
- (3) in not finding that Ramon was the one at fault and his own fault caused, or at least contributed to, his unfortunate accident;
- (4) in awarding damages to the private respondents; and
- (5) in finding that petitioner Philtranco was solidarily liable with Manilhig for damages.<sup>[8]</sup>

In its decision of 31 January 1995, the Court of Appeals affirmed the decision of the trial court. It held that the petitioners were not denied due process, as they were given an opportunity to present their defense. The records show that they were notified of the assignment of the case for 30 and 31 March 1992. Yet, their counsel

did not appear on the said dates. Neither did he file a motion for postponement of the hearings, nor did he appeal from the denial of the motions for reconsideration of the 31 March 1992 Order of the trial court. The petitioners have thereby waived their right to present evidence. Their expectation that they would have to object yet to a formal offer of evidence by the private respondents was "misplaced," for it was within the sound discretion of the court to allow oral offer of evidence.

As to the second and third assigned errors, the respondent court disposed as follows:

... We cannot help but accord with the lower court's finding on appellant Manilhig's fault. First, it is not disputed that the bus driven by appellant Manilhig was being pushed at the time of the unfortunate happening. It is of common knowledge and experience that when a vehicle is pushed to a jump-start, its initial movement is far from slow. Rather, its movement is abrupt and jerky and it takes a while before the vehicle attains normal speed. The lower court had thus enough basis to conclude, as it did, that the bumping of the victim was due to appellant Manilhig's actionable negligence and inattention. Prudence should have dictated against jump-starting the bus in a busy section of the city. Militating further against appellants' posture was the fact that the precarious pushing of subject bus to a jumpstart was done where the bus had to take a left turn, thereby making the move too risky to take. The possibility that pedestrians on Gomez Street, where the bus turned left and the victim was biking, would be unaware of a vehicle being pushed to a jumpstart, was too obvious to be overlooked. Verily, contrary to their bare arguments, there was gross negligence on the part of appellants.

The doctrine of last clear chance theorized upon by appellants, is inapplicable under the premises because the victim, who was bumped from behind, obviously, did not of course anticipate a Philtranco bus being pushed from a perpendicular street.

The respondent court sustained the awards of moral and exemplary damages and of attorney's fees, for they are warranted under Articles 2206, 2231, and 2208(1), respectively, of the Civil Code. Anent the solidary liability of petitioner Philtranco, the same finds support in Articles 2180 and 2194 of the said Code. The defense that Philtranco exercised the diligence of a good father of a family in the selection and supervision of its employees crumbles in the face of the gross negligence of its driver, which caused the untimely death of the victim.

Their motion for reconsideration having been denied, the petitioners came to us claiming that the Court of Appeals gravely erred

## **I**

...IN HOLDING THAT PETITIONERS WAIVED THEIR RIGHT TO PRESENT THEIR EVIDENCE, AND THAT PETITIONERS WERE NOT DENIED DUE PROCESS.

## **II**

...IN APPLYING ART. 2194, INSTEAD OF ART. 2180, OF THE CIVIL CODE, AND IN HOLDING THAT PETITIONER PHILTRANCO CAN NOT INVOKE THE DEFENSE OF DILIGENCE OF A GOOD FATHER OF A FAMILY.

### III

...IN AWARDING DAMAGES TO RESPONDENTS AND/OR IN NOT FINDING THE TRIAL COURT'S AWARD OF DAMAGES EXCESSIVE.

We resolved to give due course to the petition and required the parties to submit their respective memoranda after due consideration of the allegations, issues, and arguments adduced in the petition, the comment thereon by the private respondents, and the reply to the comment filed by the petitioners. The petitioners filed their memorandum in due time; while the private respondents filed theirs only on 3 January 1997, after their counsel was fined in the amount of P1,000 for failure to submit the required memorandum.

The first imputed error is without merit. The petitioners and their counsel, Atty. Jose Buban, were duly notified in open court of the order of the trial court of 10 February 1992 setting the case for hearing on 30 and 31 March 1992.<sup>[9]</sup> On both dates neither the petitioners nor their counsel appeared. In his motion for reconsideration, <sup>[10]</sup> Atty. Buban gave the following reasons for his failure to appear on the said hearings:

1. That when this case was called on March 27, 1992, counsel was very much indisposed due to the rigors of a very hectic campaign as he is a candidate for City Councilor of Tacloban; he wanted to leave for Calbayog City, but he was seized with slight fever on the morning of said date; but then, during the last hearing, counsel was made to understand that plaintiffs would formally offer their exhibits in writing, for which reason, counsel for defendants waited for a copy of said formal offer, but counsel did not receive any copy as counsel for plaintiffs opted to formally offer their exhibits orally in open court;
2. That counsel for defendants, in good faith believed that he would be given reasonable time within which to comment on the formal offer in writing, only to know that counsel for plaintiffs orally offered their exhibits in open court and that the same were admitted by the Honorable Court; and that when this case was called on March 30 and 31, 1992, the undersigned counsel honestly believed that said schedule would be cancelled, pending on the submission of the comments made by the defendants on the formal offer; but it was not so, as the exhibits were admitted in open court.<sup>[11]</sup>

In its order of 26 May 1992, the trial court denied the motion, finding it to be "devoid of meritorious basis," as Atty. Buban could have filed a motion for postponement.<sup>[12]</sup> Atty. Buban then filed a motion to reconsider<sup>[13]</sup> the order of denial, which was likewise denied by the trial court in its order of 12 August 1992. <sup>[14]</sup> Nothing more was done by the petitioners after receipt of the order of 12 August 1992. A perusal of the first and second motions for reconsideration discloses