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THIRD DIVISION

[G.R. No. 164749, March 15, 2017]

ROMULO ABROGAR AND ERLINDA ABROGAR, PETITIONERS, VS. COSMOS BOTTLING COMPANY AND INTERGAMES, INC., RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

This case involves a claim for damages arising from the negligence causing the death of a participant in an organized marathon bumped by a passenger jeepney on the route of the race. The issues revolve on whether the organizer and the sponsor of the marathon were guilty of negligence, and, if so, was their negligence the proximate cause of the death of the participant; on whether the negligence of the driver of the passenger jeepney was an efficient intervening cause; on whether the doctrine of assumption of risk was applicable to the fatality; and on whether the heirs of the fatality can recover damages for loss of earning capacity of the latter who, being then a minor, had no gainful employment.

The Case

By this appeal, the parents of the late Rommel Abrogar (Rommel), a marathon runner, seek the review and reversal of the decision promulgated on March 10, 2004,[1] whereby the Court of Appeals (CA) reversed and set aside the judgment rendered in their favor on May 10, 1991 by the Regional Trial Court (RTC), Branch 83, in Quezon City[2] finding and declaring respondents Cosmos Bottling Company (Cosmos), a domestic soft-drinks company whose products included Pop Cola, and Intergames, Inc. (Intergames), also a domestic corporation organizing and supervising the "1st Pop Cola Junior Marathon" held on June 15, 1980 in Quezon City, solidarily liable for damages arising from the untimely death of Rommel, then a minor 18 years of age,[3] after being bumped by a recklessly driven passenger jeepney along the route of the marathon.

Antecedents

The CA narrated the antecedents in the assailed judgment,[4] *viz.*:

> [T]o promote the sales of "Pop Cola", defendant Cosmos, jointly with Intergames, organized an endurance running contest billed as the "1st Pop Cola Junior Marathon" scheduled to be held on June 15, 1980. The organizers plotted a 10-kilometer course starting from the premises of the Interim Batasang Pambansa (IBP for brevity), through public roads and streets, to end at the Quezon Memorial Circle. Plaintiffs' son Rommel applied with the defendants to be allowed to participate in the contest and after complying with defendants' requirements, his application was accepted and he was given an official number. Consequently, on June 15,

> 1980 at the designated time of the marathon, Rommel joined the other participants and ran the course plotted by the defendants. As it turned out, the plaintiffs' (sic) further alleged, the defendants failed to provide adequate safety and precautionary measures and to exercise the diligence required of them by the nature of their undertaking, in that they failed to insulate and protect the participants of the marathon from the vehicular and other dangers along the marathon route. Rommel was bumped by a jeepney that was then running along the route of the marathon on Don Mariano Marcos Avenue (DMMA for brevity), and in spite of medical treatment given to him at the Ospital ng Bagong Lipunan, he died later that same day due to severe head injuries.

On October 28, 1980, the petitioners sued the respondents in the then Court of First Instance of Rizal (Quezon City) to recover various damages for the untimely death of Rommel (*i.e.*, actual and compensatory damages, loss of earning capacity, moral damages, exemplary damages, attorney's fees and expenses of litigation).[5]

Cosmos denied liability, insisting that it had not been the organizer of the marathon, but only its sponsor; that its participation had been limited to providing financial assistance to Intergames;[6] that the financial assistance it had extended to Intergames, the sole organizer of the marathon, had been in answer to the Government's call to the private sector to help promote sports development and physical fitness;[7] that the petitioners had no cause of action against it because there was no privity of contract between the participants in the marathon and Cosmos; and that it had nothing to do with the organization, operation and running of the event.[8]

As counterclaim, Cosmos sought attorney's fees and expenses of litigation from the petitioners for their being unwarrantedly included as a defendant in the case. It averred a cross-claim against Intergames, stating that the latter had guaranteed to hold Cosmos "completely free and harmless from any claim or action for liability for any injuries or bodily harm which may be sustained by any of the entries in the '1st Pop Cola Junior Marathon' or for any damage to the property or properties of third parties, which may likewise arise in the course of the race."[9] Thus, Cosmos sought to hold Intergames solely liable should the claim of the petitioners prosper.[10]

On its part, Intergames asserted that Rommel's death had been an accident exclusively caused by the negligence of the jeepney driver; that it was not responsible for the accident; that as the marathon organizer, it did not assume the responsibilities of an insurer of the safety of the participants; that it nevertheless caused the participants to be covered with accident insurance, but the petitioners refused to accept the proceeds thereof;[11] that there could be no cause of action against it because the acceptance and approval of Rommel's application to join the marathon had been conditioned on his waiver of all rights and causes of action arising from his participation in the marathon;[12] that it exercised due diligence in the conduct of the race that the circumstances called for and was appropriate, it having availed of all its know-how and expertise, including the adoption and implementation of all known and possible safety and precautionary measures in order to protect the participants from injuries arising from vehicular and other forms of accidents;[13] and, accordingly, the complaint should be dismissed.

In their reply and answer to counterclaim, the petitioners averred that contrary to its claims, Intergames did not provide adequate measures for the safety and protection of the race participants, considering that motor vehicles were traversing the race route and the participants were made to run along the flow of traffic, instead of against it; that Intergames did not provide adequate traffic marshals to secure the safety and protection of the participants;[14] that Intergames could not limit its liability on the basis of the accident insurance policies it had secured to cover the race participants; that the waiver signed by Rommel could not be a basis for denying liability because the same was null and void for being contrary to law, morals, customs and public policy;[15] that their complaint sufficiently stated a cause of action because in no way could they be held liable for attorney's fees, litigation expenses or any other relief due to their having abided by the law and having acted honestly, fairly, in good faith by according to Intergames its due, as demanded by the facts and circumstances.[16]

At the pre-trial held on April 12, 1981, the parties agreed that the principal issue was whether or not Cosmos and Intergames were liable for the death of Rommel because of negligence in conducting the marathon.[17]

Judgment of the RTC

In its decision dated May 10, 1991,[18] the RTC ruled as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs-spouses Romulo Abrogar and Erlinda Abrogar and against defendants Cosmos Bottling Company, Inc. and Intergames, Inc., ordering both defendants, jointly and severally, to pay and deliver to the plaintiffs the amounts of Twenty Eight Thousand Sixty One Pesos and Sixty Three Centavos (P28,061.63) as actual damages; One Hundred Thousand Pesos (P100,000.00) as moral damages; Fifty Thousand Pesos (P50,000.00) as exemplary damages and Ten Percent (10%) of the total amount of One Hundred Seventy Eight Thousand Sixty One Pesos and Sixty Three Centavos (P178,061,63) or Seventeen Thousand Eight Hundred Six Pesos and Sixteen Centavos (P17,806.16) as attorney's fees.
>
> On the cross-claim of defendant Cosmos Bottling Company, Inc., defendant Intergames, Inc, is hereby ordered to reimburse to the former any and all amounts which may be recovered by the plaintiffs from it by virtue of this Decision.
>
> SO ORDERED.

The RTC observed that the safeguards allegedly instituted by Intergames in conducting the marathon had fallen short of the yardstick to satisfy the requirements of due diligence as called for by and appropriate under the circumstances; that the accident had happened because of inadequate preparation and Intergames' failure to exercise due diligence;[19] that the respondents could not be excused from liability by hiding behind the waiver executed by Rommel and the permission given to him by his parents because the waiver could only be effective for risks inherent in the marathon, such as stumbling, heat stroke, heart attack during the race, severe exhaustion and similar occurrences;[20] that the liability of the respondents towards the participants and third persons was solidary, because

Cosmos, the sponsor of the event, had been the principal mover of the event, and, as such, had derived benefits from the marathon that in turn had carried responsibilities towards the participants and the public; that the respondents' agreement to free Cosmos from any liability had been an agreement binding only between them, and did not bind third persons; and that Cosmos had a cause of action against Intergames for whatever could be recovered by the petitioners from Cosmos.[21]

Decision of the CA

All the parties appealed to the CA.

The petitioners contended that the RTC erred in not awarding damages for loss of earning capacity on the part of Rommel for the reason that such damages were not recoverable due to Rommel not yet having finished his schooling; and that it would be premature to award such damages upon the assumption that he would finish college and be gainfully employed.[22]

On their part, Cosmos and Intergames separately raised essentially similar errors on the part of the RTC, to wit: (1) in holding them liable for the death of Rommel; (2) in finding them negligent in conducting the marathon; (3) in holding that Rommel and his parents did not assume the risks of the marathon; (4) in not holding that the sole and proximate cause of the death of Rommel was the negligence of the jeepney driver; and (5) in making them liable, jointly and solidarily, for damages, attorney's fees and expenses of litigation.[23]

The CA reduced the issues to four, namely:

> 1. Whether or not appellant Intergames was negligent in its conduct of the "1st Pop Cola Junior Marathon" held on June 15, 1980 and if so, whether its negligence was the proximate cause of the death of Rommel Abrogar.
>
> 2. Whether or not appellant Cosmos can be held jointly and solidarity liable with appellant Intergames for the death of Rommel Abrogar, assuming that appellant Intergames is found to have been negligent in the conduct of the Pop Cola marathon and such negligence was the proximate cause of the death of Rommel Abrogar.
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> 3. Whether or not the appellants Abrogar are entitled to be compensated for the "loss of earning capacity" of their son Rommel.
>
> 4. Whether or not the appellants Abrogar are entitled to the actual, moral, and exemplary damages granted to them by the Trial Court.[24]

In its assailed judgment promulgated on March 10, 2004,[25] the CA ruled as follows:

> As to the first issue, this Court finds that appellant Intergames was not negligent in organizing the said marathon.
>
> Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct

to human affairs, would do, or doing something which a prudent and reasonable man would not do.

The whole theory of negligence presuppose some uniform standard of behavior which must be an external and objective one, rather than the individual judgment good or bad, of the particular actor; it must be, as far as possible, the same for all persons; and at the same time make proper allowance for the risk apparent to the actor for his capacity to meet it, and for the circumstances under which he must act.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and of the acts involved in the particular case.

In the case at bar, the trial court erred in finding that the appellant Intergames failed to satisfy the requirements of due diligence in the conduct of the race.

The trial court in its decision said that the accident in question could have been avoided if the route of the marathon was blocked off from the regular traffic, instead of allowing the runners to run together with the flow of traffic. Thus, the said court considered the appellant Intergames at fault for proceeding with the marathon despite the fact that the Northern Police District, MPF, Quezon City did not allow the road to be blocked off from traffic.

This Court finds that the standard of conduct used by the trial court is not the ordinary conduct of a prudent man in such a given situation. According to the said court, the only way to conduct a safe road race is to block off the traffic for the duration of the event and direct the cars and public utilities to take alternative routes in the meantime that the marathon event is being held. Such standard is too high and is even inapplicable in the case at bar because, there is no alternative route from IBP to Don Mariano Marcos to Quezon City Hall.

The Civil Code provides that if the law or contract does not state the diligence which is to be observed in the performance of an obligation that which is expected of a good father of the family shall only be required. Accordingly, appellant Intergames is only bound to exercise the degree of care that would be exercised by an ordinarily careful and prudent man in the same position and circumstances and not that of the cautious man of more than average prudence. Hence, appellant Intergames is only expected to observe ordinary diligence and not extraordinary diligence.

In this case, the marathon was allowed by the Northern Police District, MPF, Quezon City on the condition that the road should not be blocked off from traffic. Appellant Intergames had no choice. It had to comply with it or else the said marathon would not be allowed at all.

The trial court erred in contending that appellant Intergames should have looked for alternative places in Metro Manila given the condition set by the Northern Police District, MPF, Quezon City; precisely because as Mr. Jose Castro has testified the said route was found to be the best route after a careful study and consideration of all the factors involved. Having