

SECOND DIVISION

[G.R. No. 176946, November 15, 2010]

CONSTANCIA G. TAMAYO, JOCELYN G. TAMAYO, AND ARAMIS G. TAMAYO, COLLECTIVELY KNOWN AS HEIRS OF CIRILO TAMAYO, PETITIONERS, VS. ROSALIA ABAD SEÑORA, ROAN ABAD SEÑORA, AND JANETE ABAD SEÑORA, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioners Constancia G. Tamayo (Constancia), Jocelyn G. Tamayo, and Aramis G. Tamayo are assailing the Decision^[1] dated March 22, 2006 and the Resolution^[2] dated February 6, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 63171. The CA affirmed, with modification, the decision^[3] of the Regional Trial Court (RTC) of Parañaque City in Civil Case No. 96-0339.

The factual antecedents, as found by the RTC and affirmed by the CA, are as follows:

On September 28, 1995, at about 11:00 a.m., Antonieto M. Señora (Señora), then 43 years old and a police chief inspector of the Philippine National Police (PNP),^[4] was riding a motorcycle and crossing the intersection of Sucat Road towards Filipinas Avenue, when a tricycle allegedly bumped his motorcycle from behind. As a result, the motorcycle was pushed into the path of an Isuzu Elf Van (delivery van), which was cruising along Sucat Road and heading towards South Superhighway. The delivery van ran over Señora, while his motorcycle was thrown a few meters away. He was recovered underneath the delivery van and rushed to the Medical Center of Parañaque, where he was pronounced dead on arrival.^[5]

The tricycle was driven by Leovino F. Amparo (Amparo), who testified that it was the delivery van that bumped Señora's motorcycle. He said that he did not see how the motorcycle could have been hit by his tricycle since he was looking at his right side, but when he heard a sound, he looked to his left and saw Señora already underneath the delivery van. He also said that when he was brought to the police station for investigation, he brought his tricycle to disprove the claim of the delivery van driver by showing that his tricycle sustained no damage.^[6]

The delivery van, on the other hand, was driven by Elmer O. Polloso (Polloso) and registered in the name of Cirilo Tamayo (Cirilo). While trial was ongoing, Cirilo was suffering from lung cancer and was bedridden. His wife, petitioner Constancia, testified on his behalf. Constancia narrated that she and her husband were managing a single proprietorship known as Tamayo and Sons Ice Dealer. She testified that it was Cirilo who hired their drivers. She claimed that, as employer, her

husband exercised the due diligence of a good father of a family in the selection, hiring, and supervision of his employees, including driver Polloso. Cirilo would tell their drivers not to drive fast and not to be too strict with customers.^[7]

One of Cirilo's employees, Nora Pascual (Pascual), also testified. She alleged that she was working as auditor and checker for Tamayo and Sons Ice Dealer. She testified that she and another employee were with Polloso in the delivery van at the time of the incident. She narrated that, while they were traversing Sucat Road, she saw a motorcycle going towards Filipinas Avenue. Pascual said that, when they reached the intersection of Sucat Road and Filipinas Avenue, Polloso blew the horn. She then saw a tricycle bump the rear of the motorcycle. She said that Polloso stopped the delivery van. When they alighted, they saw the motorcycle already under the delivery van. Pascual further testified that Polloso was a careful driver who drove the truck slowly and followed traffic rules. She also said that Cirilo called for a meeting before the delivery trucks left and told his drivers to be careful in their driving and to be courteous to their customers.^[8]

On March 2, 1999, the court rendered a decision, the dispositive portion of which reads:

WHEREFORE, defendants Leovino F. Amparo, Elmer O. Polloso and Cirilo Tamayo are found liable jointly and severally to plaintiffs and ordered to pay the latter the amounts of P105,100.00 for actual damages, P50,000.00 for loss of life, P1,152,360.00 for loss of earnings and P30,000.00 for attorney's fees.

SO ORDERED.^[9]

The RTC found Polloso guilty of negligence. It held that Polloso failed to slow down or come to a full stop at the intersection, causing the delivery van to run over Señora. The RTC also found that the truck was traveling fast on the outer lane, the lane customarily considered to be for slow-moving vehicles.^[10]

The RTC held Amparo similarly guilty of negligence. It found that the tricycle had bumped into Señora's motorcycle and pushed it towards the truck's path. It said that the statement to that effect made by witness Pascual was made immediately after the accident and could be considered a "spontaneous reaction to a startling occurrence."^[11]

However, the RTC said that, even if the tricycle bumped into Señora's motorcycle from behind, the collision could have been avoided had Polloso observed the elementary rule of driving that one must slow down, or come to a full stop, when crossing an intersection.^[12]

In addition, the RTC found Cirilo to be solidarily liable for Señora's death. It held that Constancia's testimony was hearsay and unsupported by any documentary evidence. The RTC also brushed aside Pascual's testimony because, as checker and auditor, she had no participation in hiring the company's drivers. Thus, Cirilo was held vicariously liable for the acts and omissions of Polloso.^[13]

Finally, in determining the liability for loss of income, the RTC modified the formula in determining life expectancy, $2/3 \times (80 - \text{age of victim at the time of death})$. The RTC considered the retirement age of the members of the PNP, which was 55 years old. Thus, the formula that the RTC used was $2/3 \times (55 - \text{age of the victim at the time of death})$.

On appeal, the CA affirmed the RTC's decision, but modified the finding on the deceased's net earning capacity. The CA used the formula:

Net earning capacity = life expectancy x gross annual income less living expenses^[14]

with life expectancy computed as $\frac{3}{4}$

$2/3 \times (80 - \text{age of deceased})$ ^[15]

and living expenses fixed at half of the victim's gross income.

Thus, Señora's net earning capacity was computed to be P1,887,847.00.^[16]

The CA disposed of the case in this wise:

WHEREFORE, the Decision dated March 2, 1999 rendered by the Regional Trial Court of Parañaque City, Branch 257 is **AFFIRMED** with the **MODIFICATION** as to the amount representing loss of earnings to P1,887,847.00

SO ORDERED.^[17]

Petitioners' Motion for Reconsideration was denied in a Resolution dated February 6, 2007.^[18]

Petitioners are now before this Court, assailing the CA's Decision and Resolution. They raise the issues of who was negligent in the incident and what was the proximate cause of Señora's death.^[19] In particular, they submit the following Assignment of Errors:

I

THE HONORABLE COURT OF APPEALS GR[IE]VOUSLY ERRED IN HOLDING DEFENDANT ELMER POLLOSO NEGLIGENT UNDER THE OBTAINING CIRCUMSTANCES.

II

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED IN