

THIRD DIVISION

[G.R. NO. 150157, January 25, 2007]

**MAURICIO MANLICLIC AND PHILIPPINE RABBIT BUS LINES,
INC., PETITIONERS, VS. MODESTO CALAUNAN, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

Assailed before Us is the decision^[1] of the Court of Appeals in CA-G.R. CV No. 55909 which affirmed *in toto* the decision^[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Civil Case No. D-10086, finding petitioners Mauricio Manliclic and Philippine Rabbit Bus Lines, Inc. (PRBLI) solidarily liable to pay damages and attorney's fees to respondent Modesto Calaunan.

The factual antecedents are as follows:

The vehicles involved in this case are: (1) Philippine Rabbit Bus No. 353 with plate number CVD-478, owned by petitioner PRBLI and driven by petitioner Mauricio Manliclic; and (2) owner-type jeep with plate number PER-290, owned by respondent Modesto Calaunan and driven by Marcelo Mendoza.

At around 6:00 to 7:00 o'clock in the morning of 12 July 1988, respondent Calaunan, together with Marcelo Mendoza, was on his way to Manila from Pangasinan on board his owner-type jeep. The Philippine Rabbit Bus was likewise bound for Manila from Concepcion, Tarlac. At approximately Kilometer 40 of the North Luzon Expressway in Barangay Lalangan, Plaridel, Bulacan, the two vehicles collided. The front right side of the Philippine Rabbit Bus hit the rear left side of the jeep causing the latter to move to the shoulder on the right and then fall on a ditch with water resulting to further extensive damage. The bus veered to the left and stopped 7 to 8 meters from point of collision.

Respondent suffered minor injuries while his driver was unhurt. He was first brought for treatment to the Manila Central University Hospital in Kalookan City by Oscar Buan, the conductor of the Philippine Rabbit Bus, and was later transferred to the Veterans Memorial Medical Center.

By reason of such collision, a criminal case was filed before the RTC of Malolos, Bulacan, charging petitioner Manliclic with Reckless Imprudence Resulting in Damage to Property with Physical Injuries, docketed as Crim. Case No. 684-M-89. Subsequently on 2 December 1991, respondent filed a complaint for damages against petitioners Manliclic and PRBLI before the RTC of Dagupan City, docketed as Civil Case No. D-10086. The criminal case was tried ahead of the civil case. Among those who testified in the criminal case were respondent Calaunan, Marcelo Mendoza and Fernando Ramos.

In the civil case (now before this Court), the parties admitted the following:

1. The parties agreed on the capacity of the parties to sue and be sued as well as the venue and the identities of the vehicles involved;
2. The identity of the drivers and the fact that they are duly licensed;
3. The date and place of the vehicular collision;
4. The extent of the injuries suffered by plaintiff Modesto Calaunan and the existence of the medical certificate;
5. That both vehicles were going towards the south; the private jeep being ahead of the bus;
6. That the weather was fair and the road was well paved and straight, although there was a ditch on the right side where the jeep fell into.

[3]

When the civil case was heard, counsel for respondent prayed that the transcripts of stenographic notes (TSNs)^[4] of the testimonies of respondent Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case be received in evidence in the civil case in as much as these witnesses are not available to testify in the civil case.

Francisco Tuliao testified that his brother-in-law, respondent Calaunan, left for abroad sometime in November, 1989 and has not returned since then. Rogelio Ramos took the stand and said that his brother, Fernando Ramos, left for Amman, Jordan, to work. Rosalia Mendoza testified that her husband, Marcelo Mendoza, left their residence to look for a job. She narrated that she thought her husband went to his hometown in Panique, Tarlac, when he did not return after one month. She went to her husband's hometown to look for him but she was informed that he did not go there.

The trial court subpoenaed the Clerk of Court of Branch 8, RTC, Malolos, Bulacan, the court where Criminal Case No. 684-M-89 was tried, to bring the TSNs of the testimonies of respondent Calaunan,^[5] Marcelo Mendoza^[6] and Fernando Ramos^[7] in said case, together with other documentary evidence marked therein. Instead of the Branch Clerk of Court, it was Enrique Santos Guevara, Court Interpreter, who appeared before the court and identified the TSNs of the three afore-named witnesses and other pertinent documents he had brought.^[8] Counsel for respondent wanted to mark other TSNs and documents from the said criminal case to be adopted in the instant case, but since the same were not brought to the trial court, counsel for petitioners compromised that said TSNs and documents could be offered by counsel for respondent as rebuttal evidence.

For the defendants, petitioner Manliclic and bus conductor Oscar Buan testified. The TSN^[9] of the testimony of Donato Ganiban, investigator of the PRBLI, in Criminal Case No. 684-M-89 was marked and allowed to be adopted in the civil case on the ground that he was already dead.

Respondent further marked, among other documents, as rebuttal evidence, the TSNs^[10] of the testimonies of Donato Ganiban, Oscar Buan and petitioner Manliclic in Criminal Case No. 684-M-89.

The disagreement arises from the question: Who is to be held liable for the collision?

Respondent insists it was petitioner Manliclic who should be liable while the latter is resolute in saying it was the former who caused the smash up.

The versions of the parties are summarized by the trial court as follows:

The parties differed only on the manner the collision between the two (2) vehicles took place. According to the plaintiff and his driver, the jeep was cruising at the speed of 60 to 70 kilometers per hour on the slow lane of the expressway when the Philippine Rabbit Bus overtook the jeep and in the process of overtaking the jeep, the Philippine Rabbit Bus hit the rear of the jeep on the left side. At the time the Philippine Rabbit Bus hit the jeep, it was about to overtake the jeep. In other words, the Philippine Rabbit Bus was still at the back of the jeep when the jeep was hit. Fernando Ramos corroborated the testimony of the plaintiff and Marcelo Mendoza. He said that he was on another jeep following the Philippine Rabbit Bus and the jeep of plaintiff when the incident took place. He said, the jeep of the plaintiff overtook them and the said jeep of the plaintiff was followed by the Philippine Rabbit Bus which was running very fast. The bus also overtook the jeep in which he was riding. After that, he heard a loud sound. He saw the jeep of the plaintiff swerved to the right on a grassy portion of the road. The Philippine Rabbit Bus stopped and they overtook the Philippine Rabbit Bus so that it could not moved (sic), meaning they stopped in front of the Philippine Rabbit Bus. He testified that the jeep of plaintiff swerved to the right because it was bumped by the Philippine Rabbit bus from behind.

Both Mauricio Manliclic and his driver, Oscar Buan admitted that the Philippine Rabbit Bus bumped the jeep in question. However, they explained that when the Philippine Rabbit bus was about to go to the left lane to overtake the jeep, the latter jeep swerved to the left because it was to overtake another jeep in front of it. Such was their testimony before the RTC in Malolos in the criminal case and before this Court in the instant case. [Thus, which of the two versions of the manner how the collision took place was correct, would be determinative of who between the two drivers was negligent in the operation of their respective vehicles.]^[11]

Petitioner PRBLI maintained that it observed and exercised the diligence of a good father of a family in the selection and supervision of its employee, specifically petitioner Manliclic.

On 22 July 1996, the trial court rendered its decision in favor of respondent Calaunan and against petitioners Manliclic and PRBLI. The dispositive portion of its decision reads:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants ordering the said defendants to pay plaintiff jointly and solidarily the amount of P40,838.00 as actual damages for the towing as well as the repair and the materials used for the repair of the jeep in question; P100,000.00 as moral damages and another P100,000.00 as exemplary damages and P15,000.00 as attorney's fees, including appearance fees of the lawyer. In addition, the defendants are also to pay costs.^[12]

Petitioners appealed the decision *via* Notice of Appeal to the Court of Appeals.^[13]

In a decision dated 28 September 2001, the Court of Appeals, finding no reversible error in the decision of the trial court, affirmed it in all respects.^[14]

Petitioners are now before us by way of petition for review assailing the decision of the Court of Appeals. They assign as errors the following:

I

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S QUESTIONABLE ADMISSION IN EVIDENCE OF THE TSN's AND OTHER DOCUMENTS PRESENTED IN THE CRIMINAL CASE.

II

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S RELIANCE ON THE VERSION OF THE RESPONDENT ON HOW THE ACCIDENT SUPPOSEDLY OCCURRED.

III

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S UNFAIR DISREGARD OF HEREIN PETITIONER PRBL'S DEFENSE OF EXERCISE OF DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES.

IV

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE TRIAL COURT'S QUESTIONABLE AWARD OF DAMAGES AND ATTORNEY'S FEE.

With the passing away of respondent Calaunan during the pendency of this appeal with this Court, we granted the Motion for the Substitution of Respondent filed by his wife, Mrs. Precila Zarate Vda. De Calaunan, and children, Virgilio Calaunan, Carmelita Honeycomb, Evelyn Calaunan, Marko Calaunan and Liwayway Calaunan.^[15]

In their Reply to respondent's Comment, petitioners informed this Court of a Decision^[16] of the Court of Appeals acquitting petitioner Manliclic of the charge^[17] of Reckless Imprudence Resulting in Damage to Property with Physical Injuries attaching thereto a photocopy thereof.

On the first assigned error, petitioners argue that the TSNs containing the testimonies of respondent Calaunan,^[18] Marcelo Mendoza^[19] and Fernando Ramos^[20] should not be admitted in evidence for failure of respondent to comply with the requisites of Section 47, Rule 130 of the Rules of Court.

For Section 47, Rule 130^[21] to apply, the following requisites must be satisfied: (a) the witness is dead or unable to testify; (b) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests; (c) the former case involved the same subject as that in the present case, although on different causes of action; (d) the issue testified to by the witness in the former trial is the same issue involved in the present case; and (e) the adverse party had an opportunity to cross-examine the witness in the former case.^[22]

Admittedly, respondent failed to show the concurrence of all the requisites set forth by the Rules for a testimony given in a former case or proceeding to be admissible as an exception to the hearsay rule. Petitioner PRBLI, not being a party in Criminal Case No. 684-M-89, had no opportunity to cross-examine the three witnesses in said case. The criminal case was filed exclusively against petitioner Manliclic, petitioner PRBLI's employee. The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees.^[23]

Notwithstanding the fact that petitioner PRBLI was not a party in said criminal case, the testimonies of the three witnesses are still admissible on the ground that petitioner PRBLI failed to object on their admissibility.

It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence; otherwise, the objection shall be treated as waived, since the right to object is merely a privilege which the party may waive. Thus, a failure to except to the evidence because it does not conform to the statute is a waiver of the provisions of the law. Even assuming *ex gratia argumenti* that these documents are inadmissible for being hearsay, but on account of failure to object thereto, the same may be admitted and considered as sufficient to prove the facts therein asserted.^[24] Hearsay evidence alone may be insufficient to establish a fact in a suit but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves.^[25]

In the case at bar, petitioner PRBLI did not object to the TSNs containing the testimonies of respondent Calaunan, Marcelo Mendoza and Fernando Ramos in the criminal case when the same were offered in evidence in the trial court. In fact, the TSNs of the testimonies of Calaunan and Mendoza were admitted by both petitioners.^[26] Moreover, petitioner PRBLI even offered in evidence the TSN containing the testimony of Donato Ganiban in the criminal case. If petitioner PRBLI argues that the TSNs of the testimonies of plaintiff's witnesses in the criminal case should not be admitted in the instant case, why then did it offer the TSN of the testimony of Ganiban which was given in the criminal case? It appears that petitioner PRBLI wants to have its cake and eat it too. It cannot argue that the TSNs of the testimonies of the witnesses of the adverse party in the criminal case should