518 Phil. 388

FIRST DIVISION

[G.R. NO. 144723, February 27, 2006]

LARRY ESTACION, PETITIONER, VS. NOE BERNARDO, THRU AND HIS GUARDIAN AD LITEM ARLIE BERNARDO, CECILIA BANDOQUILLO AND GEMINIANO QUINQUILLERA, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* filed by Larry Estacion (petitioner) seeking to annul the Decision dated April 17, 2000[1] of the Court of Appeals (CA) in CA-GR CV No. 41447 which affirmed *in toto* the decision of the Regional Trial Court (RTC) of Dumaguete City, Branch 41, Negros Oriental, holding petitioner and his driver Bienvenido Gerosano (Gerosano) liable for damages for the injury sustained by Noe Bernardo (respondent Noe). Also assailed is the appellate court's Resolution dated August 16, 2000[2] denying petitioner's motion for reconsideration.

In the afternoon of October 16, 1982, respondent Noe was going home to Dumaguete from Cebu, *via* Bato and Tampi. At Tampi, he boarded a Ford Fiera passenger jeepney with plate no. NLD 720 driven by respondent Geminiano Quinquillera (Quinquillera), owned by respondent Cecilia Bandoquillo (Bandoquillo), and was seated on the extension seat placed at the center of the Fiera. From San Jose, an old woman wanted to ride, so respondent Noe offered his seat. Since the Fiera was already full, respondent Noe hung or stood on the left rear carrier of the vehicle. Somewhere along Barangay Sto. Niño, San Jose, Negros Oriental, between kilometers 13 and 14, the Fiera began to slow down and then stopped by the right shoulder of the road to pick up passengers. Suddenly, an Isuzu cargo truck, owned by petitioner and driven by Gerosano, which was traveling in the same direction, hit the rear end portion of the Fiera where respondent Noe was standing. Due to the tremendous force, the cargo truck smashed respondent Noe against the Fiera crushing his legs and feet which made him fall to the ground. A passing vehicle brought him to the Silliman University Medical Center where his lower left leg was amputated.

Police investigation reports showed that respondent Noe was one of the 11 passengers of the Fiera who suffered injuries; that when the Fiera stopped to pick up a passenger, the cargo truck bumped the rear left portion of the Fiera; that only one tire mark from the front right wheel of the cargo truck was seen on the road. A sketch of the accident was drawn by investigator Mateo Rubia showing the relative positions of the two vehicles, their distances from the shoulder of the road and the skid marks of the right front wheel of the truck measuring about 48 feet.

On February 18, 1993, respondent Noe, through his guardian *ad litem* Arlie Bernardo, filed with the RTC of Dumaguete City a complaint[3] for damages arising

from *quasi delict* against petitioner as the registered owner of the cargo truck and his driver Gerosano. He alleged that the proximate cause of his injuries and suffering was the reckless imprudence of Gerosano and petitioner's negligence in the selection of a reckless driver and for operating a vehicle that was not roadworthy. He prayed for actual damages, loss of income, moral and exemplary damages, attorney's fees, litigation expenses and costs of suit.

Petitioner and his driver Gerosano filed their Answer[4] denying the material allegations in the complaint. They, in turn, filed a third party complaint[5] against respondents Bandoquillo and Quinquillera, as owner and driver respectively of the Fiera. They alleged that it was the reckless imprudence of respondent driver Quinquillera and his clear violation of the traffic rules and regulations which was the proximate cause of the accident and asked for indemnification for whatever damages they would be sentenced to pay. Respondents Bandoquillo and Quinquillera filed their Answer to the third party complaint asking for the dismissal of the third party complaint and for payment of attorney's fees.

Driver Gerosano was charged criminally for reckless imprudence resulting to multiple physical injuries with damage to property before the Municipal Circuit Trial Court (MCTC) of Pamplona-Amlan and San Jose, Negros Oriental. On November 16, 1987, the MCTC rendered its decision[6] finding him guilty of the crime charged and was sentenced to four months and one day to two years and four months and to pay the costs.

On February 18, 1993, the RTC rendered its judgment in the civil case,[7] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered, ordering defendants Gerosano and Estacion, to pay plaintiff, jointly or solidarily, the following:
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> 1. P129,584.20 for actual damages in the form of medical and hospitalization expenses;
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> 2. P50,000.00 for moral damages, consisting of mental anguish, moral shock, serious anxiety and wounded feelings;
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> 3. P10,000.00 for attorney's fees; and
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> 4. P5,000.00 for litigation expenses
>
> SO ORDERED.[8]

The trial court ruled that the negligence of Gerosano, petitioner's driver, is the direct and proximate cause of the incident and of the injuries suffered by respondent Noe; that Gerosano's gross negligence and reckless imprudence had been confirmed by the Judgment in Criminal Case No. 463; that based on the findings of the police investigator, the faulty brakes caused the cargo truck to bump the Fiera; that the Traffic Accident Report showed that the tire mark of the cargo truck measuring 48 feet is visibly imprinted on the road where the incident took place indicating that the said vehicle was speeding fast; that the existence of one tire mark of the cargo truck proved that the said vehicle had a faulty brake, otherwise, it would have

produced two tire marks on the road; and that the photographs taken right after the incident also showed who the guilty party was.

The trial court did not give credence to the argument of petitioner and his driver that the truck was properly checked by a mechanic before it was dispatched for a trip. It found that petitioner is negligent in maintaining his vehicle in good condition to prevent any accident to happen; that petitioner is liable under Article 2180 of the Civil Code as employer of driver Gerosano for being negligent in the selection and supervision of his driver as well as for maintaining and operating a vehicle that was not roadworthy; and that petitioner and his driver are solidarily liable for all the natural and probable consequences of their negligent acts or omissions. The trial court dismissed the third party complaint filed by petitioner and his driver against respondents Bandoquillo and Quinquillera.

Dissatisfied, only petitioner appealed to the CA. On April 17, 2000, the CA rendered the assailed decision which affirmed *in toto* the decision of the trial court. Petitioner's motion for reconsideration was denied in a Resolution dated August 16, 2000.

Hence, the herein petition for review.

Petitioner submits the following issues for resolution:[9]

> WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONER LARRY ESTACION EXERCISED THE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY TO PREVENT DAMAGE DESPITE ABUNDANCE OF EVIDENCE TO THAT EFFECT;
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> WHETHER THE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER LARRY ESTACION EXERCISED DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF HIS EMPLOYEE AND IN MAINTAINING HIS CARGO TRUCK ROADWORTHY AND IN GOOD OPERATING CONDITION;
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> WHETHER THE COURT OF APPEALS ERRED IN EXONERATING RESPONDENTS CECILIA BANDOQUILLO AND GEMINIANO QUINQUILLERA.

In his Memorandum, petitioner contends that he was able to establish that he observed the diligence of a good father of a family not only in the selection of his employees but also in maintaining his truck roadworthy and in good operating condition; that the CA erred in exonerating respondents Bandoquillo and Quinquillera, owner and driver, respectively of the Fiera from liability when their negligence was the proximate cause of respondent Noe's injuries; that respondent Noe's act of standing in the rear carrier of the Fiera is in itself negligence on his part which was aggravated by the fact that respondent Quinquillera overtook the cargo truck driven by Gerosano on the curve and suddenly cut into the latter's lane; that due to the overloading of passengers, Gerosano was not able to see the brake lights of the Fiera when it suddenly stopped to pick up passengers; that overloading is in violation of the applicable traffic rules and regulations and Article 2185 is explicit when it provides that "unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he

was violating any traffic regulation"; that since the Fiera driver was negligent, there arises a presumption that respondent Bandoquillo, as owner of the Fiera, is negligent in the selection and supervision of her employee; that assuming petitioner Estacion and his driver are not entirely blameless, the negligence of Quinquillera is sufficient basis why the respective liabilities should be delineated *vis-á-vis* their degree of negligence consistent with Article 2179[10] of the Civil Code.

Respondent Noe filed his Memorandum alleging that the first and second issues raised are factual in nature which are beyond the ambit of a petition for review; that petitioner failed to overcome the presumption of negligence thus he is liable for the negligence of his driver Gerosano; and that the third issue is best addressed to respondents Bandoquillo and Quinquillera.

Respondents Bandoquillo and Quinquillera failed to file their memorandum despite receipt of our Resolution requiring them to submit the same.

We find it apropos to resolve first the third issue considering that the extent of the liability of petitioner and his driver is dependent on whether respondents Bandoquillo and Quinquillera are the ones negligent in the vehicular mishap that happened in the afternoon of October 16, 1982 where respondent Noe was injured, resulting in the amputation of his left leg.

At the outset, the issue raised is factual in nature. Whether a person is negligent or not is a question of fact which we cannot pass upon in a petition for review on *certiorari,* as our jurisdiction is limited to reviewing errors of law.[11] As a rule, factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[12]

On the basis of the records of this case, we find that there is cogent reason for us to review the factual findings of the lower courts to conform to the evidence on record and consider this case as an exception to the general rule.

The trial court and the appellate court had made a finding of fact that the proximate cause of the injury sustained by respondent Noe was the negligent and careless driving of petitioner's driver, Gerosano, who was driving at a fast speed with a faulty brake when the accident happened. We see no cogent reason to disturb the trial court's finding in giving more credence to the testimony of respondent Noe than the testimony of Gerosano, petitioner's truck driver.

The correctness of such finding is borne by the records. In his testimony, Gerosano

said that he was driving the truck at a speed of about 40 kilometers per hour;[13] that the Fiera was behind him but upon reaching the curve, *i.e.*, after passing San Jose going to Dumaguete, the Fiera overtook him and blocked his way;[14] that he was 10 meters from the Fiera prior to the impact[15] when he applied the brakes[16] and tried to evade the Fiera but he still hit it.[17]

We agree with the trial court and the appellate court when they found that the truck was running at a fast speed because if Gerosano was really driving at a speed of 40 kilometers per hour and considering that the distance between the truck and the Fiera in front was about 10 meters, he had more than enough time to slacken his speed and apply his break to avoid hitting the Fiera. However, from the way the truck reacted to the application of the brakes, it showed that Gerosano was driving at a fast speed because the brakes skidded a lengthy 48 feet as shown in the sketch of police investigator Rubia of the tire marks visibly printed on the road.

Moreover, the photographs taken after the incident and the testimony of Gerosano as to the extent of damage to the truck, *i.e.* the truck's windshield was broken and its hood was damaged after the impact,[18] further support the finding of both courts that Gerosano was driving at a fast pace.

The accident was further caused by the faulty brakes of the truck. Based on the sketch report, there was only one tire mark of the right tire of the cargo truck during the incident which, as testified to by police investigator Rubia, meant that the brakes of the truck were not aligned otherwise there would be two tire marks impressions on the road.[19] Although petitioner contends that there are other factors to explain why only one skid mark was found at the place of the incident, such as the angle and edges of the road as well as the balance of the weight of the cargo laden in the truck, he failed to show that indeed those factors were present to prove his defense. Such claim cannot be given credence considering that investigator Rubia testified that the body of the truck was very much on the road, *i.e.*, not over the shoulder of the road,[20] and the road was straight.[21] Indeed, it is the negligent act of petitioner's driver of driving the cargo truck at a fast speed coupled with faulty brakes which was the proximate cause of respondent Noe's injury.

Petitioner's claim that right after overtaking the cargo truck, the Fiera driver suddenly stopped to pick up three passengers from the side of the road; that the overloading of passengers prevented his truck driver from determining that the Fiera had pulled over to pick up passengers as the latter's brakelights were obstructed by the passengers standing on the rear portion of the Fiera were not substantiated at all. Respondent Quinquillera, the driver of the Fiera, testified that the distance from the curve of the road when he stopped and picked up passengers was estimated to be about 80 to 90 feet.[22] In fact, from the sketch drawn by investigator Rubia, it showed a distance of 145 feet from the curve of the road to the speed tire mark (which measured about 48 feet) visibly printed on the road to the Fiera. This means that the Fiera driver did not stop immediately after the curve as what petitioner claims. Moreover, Gerosano admitted that his truck was at a distance of 10 meters prior to the impact. The distance between the two vehicles was such that it would be impossible for Gerosano not to have seen that the Fiera had pulled over to pick up passengers.