

SECOND DIVISION

[G.R. NO. 159270, August 22, 2005]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. HON. COURT OF APPEALS, RODRIGO ARNAIZ,
REGINA LATAGAN, RICARDO GENERALAO AND PAMPANGA
SUGAR DEVELOPMENT COMPANY, INC., CORPORATION,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 47699 affirming, with modification, the decision of the Regional Trial Court (RTC) of Manila in Civil Case No. 93-64803.

The Antecedents

Pampanga Sugar Development Company, Inc. (PASUDECO) transports sugarcane from Mabalacat and Magalang, Pampanga. When the Mount Pinatubo eruption of 1991 heavily damaged the national bridges along Abacan-Angeles and Sapang Maragul *via* Magalang, Pampanga, it requested permission from the Toll Regulatory Board (TRB) for its trucks to enter and pass through the North Luzon Expressway (NLEX) *via* Dau-Sta. Ines from Mabalacat, and *via* Angeles from Magalang, and exit at San Fernando going to its milling factory.^[2] The TRB furnished the Philippine National Construction Corporation (PNCC) (the franchisee that operates and maintains the toll facilities in the North and South Luzon Toll Expressways) with a copy of the said request for it to comment thereon.^[3]

On November 5, 1991, TRB and PASUDECO entered into a Memorandum of Agreement^[4] (MOA), where the latter was allowed to enter and pass through the NLEX on the following terms and conditions:

1. PASUDECO trucks should move in convoy;
2. Said trucks will stay on the right lane;
3. A vehicle with blinking lights should be assigned at the rear end of the convoy with a sign which should read as follows: Caution: CONVOY AHEAD!!!;
4. Tollway safety measures should be properly observed;
5. Accidents or damages to the toll facilities arising out of any activity related to this approval shall be the responsibility of PASUDECO;
6. PASUDECO shall be responsible in towing their stalled trucks immediately to avoid any inconvenience to the other motorists;
7. This request will be in force only while the national bridges along Abacan-Angeles and Sapang Maragul *via* Magalang remain impassable.

PASUDECO furnished the PNCC with a copy of the MOA.^[5] In a Letter^[6] dated October 22, 1992, the PNCC informed PASUDECO that it interposed no objection to the MOA.

At around 2:30 a.m. on January 23, 1993, Alex Sendin, the PNCC security supervisor, and his co-employees Eduardo Ducusin and Vicente Pascual were patrolling Km. 72 going north of the NLEX. They saw a pile of sugarcane in the middle portion of the north and southbound lanes of the road.^[7] They placed lit cans with diesel oil in the north and southbound lanes, including lane dividers with reflectorized markings, to warn motorists of the obstruction. Sendin, Ducusin and Pascual proceeded to the PASUDECO office, believing that the pile of sugarcane belonged to it since it was the only milling company in the area. They requested for a payloader or grader to clear the area. However, Engineer Oscar Mallari, PASUDECO's equipment supervisor and transportation superintendent, told them that no equipment operator was available as it was still very early.^[8] Nonetheless, Mallari told them that he would send someone to clear the affected area. Thereafter, Sendin and company went back to Km. 72 and manned the traffic. At around 4:00 a.m., five (5) PASUDECO men arrived, and started clearing the highway of the sugarcane. They stacked the sugarcane at the side of the road. The men left the area at around 5:40 a.m., leaving a few flattened sugarcanes scattered on the road. As the bulk of the sugarcanes had been piled and transferred along the roadside, Sendin thought there was no longer a need to man the traffic. As dawn was already approaching, Sendin and company removed the lighted cans and lane dividers.^[9] Sendin went to his office in Sta. Rita, Guiguinto, Bulacan, and made the necessary report.^[10]

At about 6:30 a.m., Rodrigo S. Arnaiz, a certified mechanic and marketing manager of JETTY Marketing, Inc.,^[11] was driving his two-door Toyota Corolla with plate number FAG 961 along the NLEX at about 65 kilometers per hour.^[12] He was with his sister Regina Latagan, and his friend Ricardo Generalao; they were on their way to Baguio to attend their grandmother's first death anniversary.^[13] As the vehicle ran over the scattered sugarcane, it flew out of control and turned turtle several times. The accident threw the car about fifteen paces away from the scattered sugarcane.

Police Investigator Demetrio Arcilla investigated the matter and saw black and white sugarcanes on the road, on both lanes, which appeared to be flattened.^[14]

On March 4, 1993, Arnaiz, Latagan and Generalao filed a complaint^[15] for damages against PASUDECO and PNCC in the RTC of Manila, Branch 16. The case was docketed as Civil Case No. 93-64803. They alleged, *inter alia*, that through its negligence, PNCC failed to keep and maintain the NLEX safe for motorists when it allowed PASUDECO trucks with uncovered and unsecured sugarcane to pass through it; that PASUDECO negligently spilled sugarcanes on the NLEX, and PNCC failed to put up emergency devices to sufficiently warn approaching motorists of the existence of such spillage; and that the combined gross negligence of PASUDECO and PNCC was the direct and proximate cause of the injuries sustained by Latagan and the damage to Arnaiz's car. They prayed, thus:

WHEREFORE, it is respectfully prayed that, after due hearing, judgment be rendered for the plaintiffs, ordering the defendants jointly and severally:

- (a) To pay unto plaintiff Rodrigo Arnaiz the sum of P100,000.00 representing the value of his car which was totally wrecked;
- (b) to pay unto plaintiff Regina Latagan the sum of P100,000.00 by way of reimbursement for medical expenses, the sum of P50,000.00 by way of moral damages, and the sum of P30,000.00 by way of exemplary damages;
- (c) To pay unto plaintiffs Rodrigo Arnaiz and Ricardo Generalao the sum of P5,000.00 by way of reimbursement for medical expenses; and
- (d) To pay unto the plaintiffs the sum of P30,000.00 by way of attorney's fees; plus the costs of suit.

Plaintiffs pray for other reliefs which the Honorable Court may find due them in the premises.^[16]

In its Answer,^[17] PNCC admitted that it was under contract to manage the North Luzon Expressway, to keep it safe for motorists. It averred that the mishap was due to the "unreasonable speed" at which Arnaiz's car was running, causing it to turn turtle when it passed over some pieces of flattened sugarcane. It claimed that the proximate cause of the mishap was PASUDECO's gross negligence in spilling the sugarcane, and its failure to clear and mop up the area completely. It also alleged that Arnaiz was guilty of contributory negligence in driving his car at such speed.

The PNCC interposed a compulsory counterclaim^[18] against the plaintiffs and cross-claim^[19] against its co-defendant PASUDECO.

PASUDECO adduced evidence that aside from it, there were other sugarcane mills in the area, like the ARCAM Sugar Central (formerly known as Pampanga Sugar Mills) and the Central Azucarrera de Tarlac;^[20] it was only through the expressway that a vehicle could access these three (3) sugar centrals;^[21] and PASUDECO was obligated to clear spillages whether the planters' truck which caused the spillage was bound for PASUDECO, ARCAM or Central Azucarera.^[22]

On rebuttal, PNCC adduced evidence that only planters' trucks with "PSD" markings were allowed to use the tollway;^[23] that all such trucks would surely enter the PASUDECO compound. Thus, the truck which spilled sugarcane in January 1993 in Km. 72 was on its way to the PASUDECO compound.^[24]

On November 11, 1994, the RTC rendered its decision^[25] in favor of Latagan, dismissing that of Arnaiz and Generalao for insufficiency of evidence. The case as against the PNCC was, likewise, dismissed. The decretal portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

I. ORDERING defendant PASUDECO:

1. To pay plaintiff Regina Latagan:
 - a. P25,000= for actual damages
 - b. P15,000= for moral damages
 - c. P10,000= for attorney's fees

P50,000

2. To pay costs of suit.

II. The case is DISMISSED as to defendant PNCC. No pronouncement as to costs. Its counterclaim is, likewise, DISMISSED.

III. The claims for damages of plaintiffs Rodrigo Arnaiz and Ricardo Generalao are hereby DISMISSED for insufficiency of evidence.

SO ORDERED. [26]

Both the plaintiffs Arnaiz, Latagan and Generalao and defendant PASUDECO appealed the decision to the CA. Since the plaintiffs failed to file their brief, the CA dismissed their appeal. [27]

Resolving PASUDECO's appeal, the CA rendered judgment on April 29, 2003, affirming the RTC decision with modification. The appellate court ruled that Arnaiz was negligent in driving his car, but that such negligence was merely contributory to the cause of the mishap, *i.e.*, PASUDECO's failure to properly supervise its men in clearing the affected area. Its supervisor, Mallari, admitted that he was at his house while their men were clearing Km. 72. Thus, the appellate court held both PASUDECO and PNCC, jointly and severally, liable to Latagan. The decretal portion of the decision reads:

WHEREFORE, premises considered, the assailed DECISION is hereby MODIFIED and judgment is hereby rendered declaring PASUDECO and PNCC, jointly and solidarily, liable:

1. To pay plaintiff Regina Latagan:

- a. P25,000= for actual damages
- b. P15,000= for moral damages
- c. P10,000= for attorney's fees

2. To pay costs of suit.

SO ORDERED. [28]

The PNCC, now the petitioner, filed a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, alleging that:

THE HONORABLE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE TRIAL COURT AND MAKING PETITIONER PNCC,

JOINTLY AND [SOLIDARILY], LIABLE WITH PRIVATE RESPONDENT
PASUDECO.^[29]

The petitioner asserts that the trial court was correct when it held that PASUDECO should be held liable for the mishap, since it had assumed such responsibility based on the MOA between it and the TRB. The petitioner relies on the trial court's finding that only PASUDECO was given a permit to pass through the route.

The petitioner insists that the respondents failed to prove that it was negligent in the operation and maintenance of the NLEX. It maintains that it had done its part in clearing the expressway of sugarcane piles, and that there were no more piles of sugarcane along the road when its men left Km. 72; only a few scattered sugarcanes flattened by the passing motorists were left. Any liability arising from any mishap related to the spilled sugarcanes should be borne by PASUDECO, in accordance with the MOA which provides that "*accidents or damages to the toll facilities arising out of any activity related to this approval shall be the responsibility of PASUDECO.*"

The petitioner also argues that the respondents should bear the consequences of their own fault or negligence, and that the proximate and immediate cause of the mishap in question was respondent Arnaiz's reckless imprudence or gross negligence.

The Court notes that the issues raised in the petition are factual in nature. Under Rule 45 of the Rules of Court, only questions of law may be raised in this Court, and while there are exceptions to the rule, no such exception is present in this case. On this ground alone, the petition is destined to fail. The Court, however, has reviewed the records of the case, and finds that the petition is bereft of merit.

The petitioner is the grantee of a franchise, giving it the right, privilege and authority to construct, operate and maintain toll facilities covering the expressways, collectively known as the NLEX.^[30] Concomitant thereto is its right to collect toll fees for the use of the said expressways and its obligation to keep it safe for motorists.

There are three elements of a quasi-delict: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.^[31] Article 2176 of the New Civil Code provides:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do.^[32] It also refers to the conduct which creates undue risk of harm to another, the failure to observe that degree of care, precaution and vigilance that the circumstance justly