

THIRD DIVISION

[G.R. NO. 121920, August 09, 2005]

**THE MUNICIPALITY OF SAN JUAN, METRO MANILA, PETITIONER,
VS. THE HON. COURT OF APPEALS, LAURA BIGLANG-AWA,
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM
(MWSS), AND KWOK CHEUNG, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

In this appeal by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Municipality of San Juan urges us to annul and set aside the **decision dated 08 September 1995**^[1] of the Court of Appeals in CA-G.R. CV No. 38906, affirming with modification an earlier decision of the Regional Trial Court at Pasig City in an action for damages thereat commenced by private respondent Laura Biglang-awa against, among others, the herein petitioner.

The material facts are not at all disputed:

Under a "*Contract For Water Service Connections*"^[2] entered into by and between the Metropolitan Waterworks and Sewerage System (MWSS) and Kwok Cheung as sole proprietor of K.C. Waterworks System Construction (KC, for short), the former engaged the services of the latter to install water service connections. Article 11 (Scope of Work), paragraph 2.01 of the agreement provides:

2.01 The CONTRACTOR agrees to install water service connections, transfer location of tapping to the nearest main, undertake separation of service connection, change rusted connections, within the service area of the MWSS specified in each job order covered by this Contract, from the water main up to the installation of the verticals. Tapping of the service pipe connection and mounting of water meter shall be undertaken exclusively or solely by the MWSS;

On 20 May 1988, KC was given a Job Order by the South Sector Office of MWSS to conduct and effect excavations at the corner of M. Paterno and Santolan Road, San Juan, Metro Manila, a national road, for the laying of water pipes and tapping of water to the respective houses of water concessionaires.

That same day, KC dispatched five (5) of its workers under Project Engineer Ernesto Battad, Jr. to conduct the digging operations in the specified place. The workers installed four (4) barricades made up of two-inch thick GI pipes welded together, 1.3 meters wide and 1.2 meters high, at the area where the digging is to take place. The digging operations started at 9 o'clock in the morning and ended at about 3 o'clock in the afternoon. The workers dug a hole one (1) meter wide and 1.5 meters deep, after which they refilled the excavated portion of the road with the same

gravel and stone excavated from the area. At that time, only ¼ of the job was finished in view of the fact that the workers were still required to re-excavate that particular portion for the tapping of pipes for the water connections to the concessionaires.

Meanwhile, between 10 o'clock and 11 o'clock in the evening of 31 May 1988, Priscilla Chan was driving her Toyota Crown car with Plate No. PDK 991 at a speed of thirty (30) kilometers per hour on the right side of Santolan Road towards the direction of Pinaglabanan, San Juan, Metro Manila. With her on board the car and seated on the right front seat was Assistant City Prosecutor Laura Biglang-awa. The road was flooded as it was then raining hard. Suddenly, the left front wheel of the car fell on a manhole where the workers of KC had earlier made excavations. As a result, the humerus on the right arm of Prosecutor Biglang-awa was fractured. Thereupon, Priscilla Chan contacted Biglang-awa's husband who immediately arrived at the scene and brought his wife to the Cardinal Santos Hospital.

Dispatched to the scene of the accident to conduct an investigation thereof, Pfc. Felix Ramos of the Traffic Division of the San Juan Police Station, upon arriving thereat, saw Priscilla Chan's car already extracted from the manhole and placed beside the excavated portion of the road. According to this police officer, he did not see any barricades at the scene when he arrived less than an hour later. A *Traffic Accident Investigation Report*^[3] was thereafter prepared and signed by Pfc. Ramos.

At the hospital, the attending physician, after having performed a close reduction and application of abduction splint on Biglang-awa, placed a plastic cast on her right arm. Barring complications, the injury she suffered was expected to heal in four (4) to six (6) weeks, although she must revisit her doctor from time to time for check-up and rehabilitation. After some time, the plastic cast was removed. Biglang-awa sustained no deformity and no tenderness of the area of the injury but she could not sleep on her right side because she still felt pain in that portion of her body. A *Medical Certificate*^[4] on her injuries was issued by Dr. Antonio Rivera.

Consequent to the foregoing incident, Biglang-awa filed before the Regional Trial Court at Pasig, Metro Manila a complaint for damages against MWSS, the Municipality of San Juan and a number of San Juan municipal officials.

Later, Biglang-awa amended her complaint twice. In her second amended complaint, she included KC as one of the defendants.

After due proceedings, the trial court rendered judgment in favor of Biglang-awa adjudging MWSS and the Municipality of San Juan jointly and severally liable to her. Dated 29 February 1992, the decision^[5] dispositively reads in full, thus:

WHEREFORE, foregoing considered, judgment is hereby rendered declaring the Municipality of San Juan, Metro Manila and the Metropolitan Waterworks and Sewerage System jointly and severally liable to the plaintiff [Biglang-awa]. Both defendants are ordered to pay plaintiff the amounts of:

(a) P18,389.55, for actual damages suffered by the plaintiff;

(b) P15,000.00, for moral damages;

(c) P10,000.00, for exemplary damages;

(d) P5,000.00, for attorney's fees; and

(e) to pay the costs.

SO ORDERED.

Unable to accept the judgment, both Biglang-awa and the Municipality of San Juan went to the Court of Appeals *via* ordinary appeal under Rule 41 of the Rules of Court, which appeal was thereat docketed as **CA-G.R. CV No. 38906**.

As stated at the outset hereof, the appellate court, in a decision dated 08 September 1995, affirmed with modification that of the trial court, to wit:

IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is **AFFIRMED** but modified as follows:

1. The Appellees KC and MWSS and the Appellant San Juan are hereby ordered to pay, jointly and severally, to [Biglang-awa] the amounts of P50,000.00 by way of moral damages, P50,000.00 by way of exemplary damages and P5,000.00 by way of attorney's fees, without prejudice to the right of the Appellee MWSS for reimbursement from the Appellee KC under the Contract, Exhibit "3-MWSS":
2. The counterclaims of the Appellees and Appellant San Juan and the cross-claim of the latter are **DISMISSED**. Without pronouncement as to costs.

SO ORDERED. (Words in bracket supplied).

Therefrom, petitioner Municipality of San Juan came to this Court thru the present recourse, on its submissions that:

I.

THE RESPONDENT APPELLATE COURT HAS DECIDED A QUESTION OF SUBSTANCE NOT HEREFOR DECIDED BY THE SUPREME COURT.

II.

THE RESPONDENT APPELLATE COURT HAS DECIDED A QUESTION PROBABLY NOT IN ACCORD WITH THE LAW AND JURISPRUDENCE.

With no similar recourse having been taken by the other parties, the Court shall limit itself to the liability or non-liability of petitioner municipality for the injury sustained by Biglang-awa.

In denying liability for the subject accident, petitioner essentially anchored its defense on two provisions of laws, namely: (1) Section 149, [1][z] of Batas Pambansa Blg. 337, otherwise known as the Local Government Code of 1983; and (2) Section 8, Ordinance 82-01, of the Metropolitan Manila Commission.