

SECOND DIVISION

[G.R. No. 148737, June 16, 2004]

**ERNESTO PLEYTO AND PHILIPPINE RABBIT BUS LINES, INC.,
PETITIONERS, VS. MARIA D. LOMBOY AND CARMELA LOMBOY,
RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

For review on certiorari is the Decision^[1] dated October 31, 2000 of the Court of Appeals in CA-G.R. CV No. 61300, which affirmed with modification the Decision^[2] dated June 26, 1998 of the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Civil Case No. 95-00724-D. The RTC ordered herein petitioners to solidarily pay damages to respondents. Petitioners likewise assail the Resolution^[3] dated June 21, 2001 of the appellate court, which denied their Motion for Reconsideration.

Petitioner Philippine Rabbit Bus Lines, Inc. (PRBL), with principal office at Tarlac City, Tarlac, is a public carrier, engaged in carrying passengers and goods for a fare. It serviced various routes in Central and Northern Luzon. Petitioner Ernesto Pleyto was a bus driver employed by PRBL at the time of the incident in question.

Respondent Maria D. Lomboy of Calasiao, Pangasinan, is the surviving spouse of the late Ricardo Lomboy, who died in Pasolingan, Gerona, Tarlac, in a vehicular accident at around 11:30 a.m. of May 16, 1995. The accident was a head-on collision between the PRBL bus driven by petitioner Pleyto and the car where Ricardo was a passenger. Respondent Carmela Lomboy is the eldest daughter of Ricardo and Maria Lomboy. Carmela suffered injuries requiring hospitalization in the same accident which resulted in her father's death.

On November 29, 1995, herein respondents, as pauper-litigants, filed an action for damages against PRBL and its driver, Pleyto, with the RTC of Dagupan City. In their complaint, which was docketed as Civil Case No. 95-00724-D, the Lomboys prayed that they be indemnified for the untimely death of Ricardo Lomboy, his lost earnings, the medical and hospitalization expenses of Carmela, and moral damages.

The facts, established during trial and affirmed by the appellate court, are as follows:

At approximately 11:30 a.m. of May 16, 1995, PRBL Bus No. 1539, with Plate No. CVD 556, driven by petitioner Pleyto, was traveling along MacArthur Highway in Gerona, Tarlac bound for Vigan, Ilocos Sur. It was drizzling that morning and the macadam road was wet. Right in front of the bus, headed north, was the tricycle with Plate No. CX 7844, owned and driven by one Rodolfo Esguerra.

According to Rolly Orpilla, a witness and one of the bus passengers, Pleyto tried to

overtake Esguerra's tricycle but hit it instead. Pleyto then swerved into the left opposite lane. Coming down the lane, some fifty meters away, was a southbound Mitsubishi Lancer car, with Plate No. PRS 941, driven by Arnulfo Asuncion. The car was headed for Manila with some passengers. Seated beside Arnulfo was his brother-in-law, Ricardo Lomboy, while in the back seat were Ricardo's 18-year old daughter Carmela and her friend, one Rhino Daba. PRBL Bus No. 1539 smashed head-on the car, killing Arnulfo and Ricardo instantly. Carmela and Rhino suffered injuries, but only Carmela required hospitalization.

In their Answer, petitioners PRBL and Ernesto Pleyto both claimed that the bus was running slowly at the time of the accident. They pointed out that Bus No. 1539 had been inspected by driver Pleyto and examined by a mechanic prior to the trip, in accordance with the company's standard operating procedure. It was found in good working condition. Pleyto claimed that while cruising along the highway at Gerona, Tarlac, he noticed Esguerra's tricycle and followed it at a safe distance after he was unable to overtake it. Suddenly and without warning, the tricycle stopped in the middle of the road. Pleyto stepped on the brakes and the bus lost speed. But, since it skidded towards the direction of the tricycle, he swerved the bus to the other lane to avoid hitting it, only to collide with the Manila-bound Mitsubishi car.

On June 26, 1998, the trial court decided Civil Case No. 95-00724-D as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the defendants to pay solidarily the plaintiffs the following amounts:

- 1) P50,000.00 as indemnification for the death of Ricardo Lomboy;
- 2) P1,642,521.00 for lost earnings of Ricardo Lomboy;
- 3) P59,550.00 as actual damages for the funeral, wake, religious services and prayer for the soul of the departed;
- 4) P52,000.00 for the medical treatment and medicine of Carmela Lomboy;
- 5) P500,000.00 as moral damages for the wife and children excluding Carmela Lomboy;
- 6) P50,000.00 as moral damages for Carmela Lomboy; and
- 7) To pay costs.

The filing fee the plaintiffs should have paid is hereby ordered to be paid by the plaintiffs to the Clerk of Court of this Court upon satisfaction of the foregoing amounts to the plaintiffs by the defendants.

SO ORDERED. ^[4]

In ruling for respondents, the RTC found Pleyto negligent and lacking in precaution when he overtook the tricycle with complete disregard of the approaching car in the other lane. It found the testimony of Rolly Orpilla credible and persuasive as against

Pleyto's self-serving and unbelievable testimony. The court found that Pleyto should have been more prudent in overtaking a tricycle, considering that it was drizzling, the road was slippery, and another vehicle was approaching from the opposite direction. The RTC found that Pleyto had clearly violated traffic rules and regulations, and thus was negligent under Article 2185^[5] of the Civil Code of the Philippines because petitioner Pleyto failed to present any proof to rebut the presumption. The lower court likewise held co-petitioner PRBL equally liable under Article 2180^[6] of the Civil Code for its failure to show that it had maintained proper supervision of its employees notwithstanding strict standards in employee selection.

Petitioners appealed the judgment of the trial court to the Court of Appeals in CA-G.R. CV No. 61300. The appellate court, however, affirmed the decision of the trial court, with modification in the award of damages, thus:

Wherefore, with the MODIFICATION that the award for actual damages is reduced to P39,550.00 for funeral and religious services and P27,000.00 for medical expenses of Carmela Lomboy; and the award for loss of earning capacity is accordingly corrected to P1,152,000.00, the appealed decision is **AFFIRMED**.

SO ORDERED.^[7]

The Court of Appeals affirmed the findings of the RTC with respect to Pleyto's fault and negligence. The appellate court noted that this was evident in his overtaking Esguerra's tricycle despite the drizzle, the slippery road, and an oncoming car a mere fifty meters away. The court reasoned that the bus must have been speeding since despite braking, the bus still hit the tricycle, and then rammed the car in the opposite lane with such force as to throw the car off the road. The appellate court also found petitioner PRBL liable as owner of the bus and as employer of Pleyto pursuant to Article 2180 of the Civil Code, for its failure to observe the required diligence in its supervision of its employees and the safe maintenance of its buses. In modifying the award of damages, the appellate court took note of the amounts that were duly supported by receipts only.

Petitioners then moved for reconsideration, but the appellate court denied it.

Hence, the instant petition, premised on the following grounds:

- A. THE SUPREME COURT MAY REVIEW THE CONCLUSION DRAWN BY THE COURT OF APPEALS, NAMELY, THAT THE PRBL BUS OVERTOOK A TRICYCLE THUS CAUSING THE ACCIDENT, SINCE IT WAS MADE IN DISREGARD OF FACTS UNDISPUTED BY THE PARTIES.
- B. THE COURT OF APPEALS DISREGARDED THE DOCTRINE LAID DOWN IN VILLA REY TRANSIT, INC. v. COURT OF APPEALS, G.R. NO. L-25499, FEBRUARY 18, 1970, 31 SCRA 511, WHEN IT ARBITRARILY PEGGED THE MONTHLY LIVING EXPENSES AT 50% OF GROSS EARNINGS.^[8]

At the outset, it appears that petitioners call for this Court to review the factual findings and conclusions of the Court of Appeals. Petitioners assail the appellate court's affirmance of the finding by the trial court that Pleyto was negligent. The

issue of negligence is factual and, in quasi-delicts, crucial in the award of damages. [9] But it is well established that under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts, and it is not its function to re-examine and weigh anew the respective evidence of the parties. [10] Factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. [11] In the present petition, no compelling reason is shown by petitioners whatsoever for this Court to reverse those findings. Our examination of the records shows that the evidence clearly supports the following findings of the appellate court:

The negligence and fault of appellant driver is manifest. He overtook the tricycle despite the oncoming car only fifty (50) meters away from him. Defendant-appellant's claim that he was driving at a mere 30 to 35 kilometers per hour does not deserve credence as it would have been easy to stop or properly maneuver the bus at this speed. The speed of the bus, the drizzle that made the road slippery, and the proximity of the car coming from the opposite direction were duly established by the evidence. The speed at which the bus traveled, inappropriate in the light of the aforementioned circumstances, is evident from the fact despite the application of the brakes, the bus still bumped the tricycle, and then proceeded to collide with the incoming car with such force that the car was pushed beyond the edge of the road to the ricefield (Paragraph 8, Affidavit of Rolly Orpilla marked Exh. "D" and Traffic Report marked Exh. "E", Folder of Exhibits).... [12]

Indeed, petitioner Pleyto violated traffic rules and regulations when he overtook the tricycle despite the presence of an oncoming car in the other lane. Article 2185 of the Civil Code lays down the presumption that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. As found by both the Court of Appeals and the trial court, petitioners failed to present any convincing proof rebutting such presumption.

A driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and not to proceed if he cannot do so in safety. When a motor vehicle is approaching or rounding a curve, there is special necessity for keeping to the right side of the road and the driver does not have the right to drive on the left hand side relying upon having time to turn to the right if a car approaching from the opposite direction comes into view. [13]

The Court of Appeals found PRBL liable for Pleyto's negligence pursuant to Article 2180 in relation to Article 2176 [14] of the Civil Code. Under Article 2180, when an injury is caused by the negligence of a servant or an employee, the master or employer is presumed to be negligent either in the selection or in the supervision of that employee. This presumption may be overcome only by satisfactorily showing that the employer exercised the care and the diligence of a good father of a family in the selection and the supervision of its employee. [15]

In fine, when the employee causes damage due to his own negligence while performing his own duties, there arises the juris tantum presumption that the

employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family.^[16] Thus, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.^[17]

In the present case, petitioners presented several documents^[18] in evidence to show the various tests and pre-qualification requirements imposed upon petitioner Pleyto before his hiring as a driver by PRBL. However, no documentary evidence was presented to prove that petitioner PRBL exercised due diligence in the supervision of its employees, including Pleyto. Citing precedents, the Court of Appeals opined,

“in order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, it is not enough for the employer to emptily invoke the existence of company guidelines and policies on hiring and supervision. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. The mere allegation of the existence of hiring procedures and supervisory policies without anything more is decidedly not sufficient to overcome such presumption. (Metro Manila Transit Corp. vs. CA (223 SCRA 521). The trial court ratiocinated:

. . .

Indeed, the testimony of the said two witnesses of the PRBL would impress one to believe that the PRBL has always exercised the strictest standard of selecting its employees and of maintaining its vehicles to avoid injury or damage to the life and limb of people on the road whether of its own passengers or pedestrians or occupants or other vehicles. It has not however, shown to the satisfaction of the Court that it has maintained proper supervision of its employees, especially drivers while in the actual operation of its buses. While it has a list of procedures and testing when it comes to recruitment and another list of what should be done with its buses before they are allowed to run on the road, it has no list of procedures and duties to be followed by a driver while he is operating a vehicle to prevent injury to persons and damage to property. Neither has it proved to the Court that there are people employed by it to supervise its drivers so that it can be seen to it that all the safety procedures to prevent accident or damage to property or injury to people on the road have been in place. It is in this aspect of supervising its employees where this Court has found the defendant PRBL deficient.” (Decision p. 29, Rollo)^[19]

In our view, no reversible error was committed by the Court of Appeals when it sustained what the trial court found after trial that PRBL had failed to rebut the presumption of negligence on its part. Said finding binds us now in this review on certiorari.