483 Phil. 756

SECOND DIVISION

[G.R. No. 130003, October 20, 2004]

JONAS AÑONUEVO, PETITIONER VS. HON. COURT OF APPEALS AND JEROME VILLAGRACIA, RESPONDENT.

D E C I S I O N

TINGA, J,:

The bicycle provides considerable speed and freedom of movement to the rider. It derives a certain charm from being unencumbered by any enclosure, affording the cyclist the perception of relative liberty. It also carries some obvious risks on the part of the user and has become the subject of regulation, if not by the government, then by parental proscription.

The present petition seeks to bar recovery by an injured cyclist of damages from the driver of the car which had struck him. The argument is hinged on the cyclist's failure to install safety devices on his bicycle. However, the lower courts agreed that the motorist himself caused the collision with his own negligence. The facts are deceptively simple, but the resolution entails thorough consideration of fundamental precepts on negligence.

The present petition raises little issue with the factual findings of the Regional Trial Court (RTC), Branch 160, of Pasig City, as affirmed by the Court of Appeals. Both courts adjudged petitioner, Jonas Añonuevo (Añonuevo), liable for the damages for the injuries sustained by the cyclist, Jerome Villagracia (Villagracia). Instead, the petition hinges on a sole legal question, characterized as "novel" by the petitioner: whether Article 2185 of the New Civil Code, which presumes the driver of a motor vehicle negligent if he was violating a traffic regulation at the time of the mishap, should apply by analogy to non-motorized vehicles.[1]

As found by the RTC, and affirmed by the Court of Appeals, the accident in question occurred on 8 February 1989, at around nine in the evening, at the intersection of Boni Avenue and Barangka Drive in Mandaluyong (now a city). Villagracia was traveling along Boni Avenue on his bicycle, while Añonuevo, traversing the opposite lane was driving his Lancer car with plate number PJJ 359. The car was owned by Procter and Gamble Inc., the employer of Añonuevo's brother, Jonathan. Añonuevo was in the course of making a left turn towards Libertad Street when the collision occurred. Villagracia sustained serious injuries as a result, which necessitated his hospitalization several times in 1989, and forced him to undergo four (4) operations.

On 26 October 1989, Villagracia instituted an action for damages against Procter and Gamble Phils., Inc. and Añonuevo before the RTC.[2] He had also filed a criminal complaint against Añonuevo before the Metropolitan Trial Court of Mandaluyong, but the latter was subsequently acquitted of the criminal charge.[3] Trial on the civil action ensued, and in a *Decision* dated 9 March 1990, the RTC rendered judgment

against Procter and Gamble and Añonuevo, ordering them to pay Villagracia the amounts of One Hundred Fifty Thousand Pesos (P150, 000.00). for actual damages, Ten Thousand Pesos (P10,000.00) for moral damages, and Twenty Thousand Pesos (P20,000.00) for attorney's fees, as well as legal costs.[4] Both defendants appealed to the Court of Appeals.

In a *Decision*[5] dated 8 May 1997, the Court of Appeals Fourth Division affirmed the RTC *Decision in toto*[6]. After the Court of Appeals denied the *Motion for Reconsideration in a Resolution*[7] dated 22 July 1997, Procter and Gamble and Añonuevo filed their respective petitions for review with this Court. Procter and Gamble's petition was denied by this Court in a *Resolution* dated 24 November 1997. Añonuevo's petition,[8] on the other hand, was given due course,[9] and is the subject of this Decision.

In arriving at the assailed Decision, the Court of Appeals affirmed the factual findings of the RTC. Among them: that it was Añonuevo's vehicle which had struck Villagracia;[10] that Añonuevo's vehicle had actually hit Villagracia's left mid-thigh, thus causing a comminuted fracture;[11] that as testified by eyewitness Alfredo Sorsano, witness for Villagracia, Añonuevo was *"umaarangkada,"* or speeding as he made the left turn into Libertad;[12] that considering Añonuevo's claim that a passenger jeepney was obstructing his path as he made the turn. Añonuevo had enough warning to control his speed;[13] and that Añonuevo failed to exercise the ordinary precaution, care and diligence required of him in order that the accident could have been avoided.[14] Notably, Añonuevo, in his current petition, does not dispute the findings of tortious conduct on his part made by the lower courts, hinging his appeal instead on the alleged negligence of Villagracia. Añonuevo proffers no exculpatory version of facts on his part, nor does he dispute the conclusions made by the RTC and the Court of Appeals. Accordingly, the Court, which is not a trier of facts,[15] is not compelled to review the factual findings of the lower courts, which following jurisprudence have to be received with respect and are in fact generally binding.[16]

Notwithstanding, the present petition presents interesting questions for resolution. Añonuevo's arguments are especially fixated on a particular question of law: whether Article 2185 of the New Civil Code should apply by analogy to non-motorized vehicles.[17] In the same vein, Añonuevo insists that Villagracia's own fault and negligence serves to absolve the former of any liability for damages.

Its is easy to discern why Añonuevo chooses to employ this line of argument. Añonuevo points out that Villagracia's bicycle had no safety gadgets such as a horn or bell, or headlights, as invoked by a 1948 municipal ordinance.[18] Nor was it duly registered with the Office of the Municipal Treasurer, as required by the same ordinance. Finally, as admitted by Villagracia, his bicycle did not have foot brakes. [19] Before this Court, Villagracia does not dispute these allegations, which he admitted during the trial, but directs our attention instead to the findings of Añonuevo's own negligence.[20] Villagracia also contends that, assuming there was contributory negligence on his part, such would not exonerate Añonuevo from payment of damages. The Court of Appeals likewise acknowledged the lack of safety gadgets on Villagracia's bicycle, but characterized the contention as "off-tangent"

and insufficient to obviate the fact that it was Añonuevo's own negligence that caused the accident.[21]

Añonuevo claims that Villagracia violated traffic regulations when he failed to register his bicycle or install safety gadgets thereon. He posits that Article 2185 of the New Civil Code applies by analogy. The provision reads:

> Article 2185. 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.

The provision was introduced for the first time in this jurisdiction with the adoption in 1950 of the New Civil Code.[22] Its applicability is expressly qualified to motor vehicles only, and there is no ground to presume that the law intended a broader coverage.

Still, Añonuevo hypothesizes that Article 2185 should apply by analogy to all types of vehicles[23]. He points out that modern-day travel is more complex now than when the Code was enacted, the number and types of vehicles now in use far more numerous than as of then. He even suggests that at the time of the enactment of the Code, the legislators "must have seen that only motor vehicles were of such public concern that they had to be specifically mentioned," yet today, the interaction of vehicles of all types and nature has "inescapably become matter of public concern" so as to expand the application of the law to be more responsive to the times.[24]

What Añonuevo seeks is for the Court to amend the explicit command of the legislature, as embodied in Article 2185, a task beyond the pale of judicial power. The Court interprets, and not creates, the law. However, since the Court is being asked to consider the matter, it might as well examine whether Article 2185 could be interpreted to include non-motorized vehicles.

At the time Article 2185 was formulated, there existed a whole array of non-motorized vehicles ranging from human-powered contraptions on wheels such as bicycles, scooters, and animal-drawn carts such as *calesas* and *carromata*. These modes of transport were even more prevalent on the roads of the 1940s and 1950s than they are today, yet the framers of the New Civil Code chose then to exclude these alternative modes from the scope of Article 2185 with the use of the term "motorized vehicles." If Añonuevo seriously contends that the application of Article 2185 be expanded due to the greater interaction today of all types of vehicles, such argument contradicts historical experience. The ratio of motorized vehicles as to non-motorized vehicles, as it stood in 1950, was significantly lower than as it stands today. This will be certainly affirmed by statistical data, assuming such has been compiled, much less confirmed by persons over sixty. Añonuevo's characterization of a vibrant intra-road dynamic between motorized and non-motorized vehicles is more apropos to the past than to the present.

There is a fundamental flaw in Añonuevo's analysis of Art. 2185, as applicable today. He premises that the need for the distinction between motorized and non-motorized vehicles arises from the relative mass of number of these vehicles. The more pertinent basis for the segregate classification is the difference in type of these vehicles. A motorized vehicle operates by reason of a motor engine unlike a non-

motorized vehicle, which runs as a result of a direct exertion by man or beast of burden of direct physical force. A motorized vehicle, unimpeded by the limitations in physical exertion. is capable of greater speeds and acceleration than non-motorized vehicles. At the same time, motorized vehicles are more capable in inflicting greater injury or damage in the event of an accident or collision. This is due to a combination of factors peculiar to the motor vehicle, such as the greater speed, its relative greater bulk of mass, and greater combustability due to the fuels that they use.

There long has been judicial recognition of the peculiar dangers posed by the motor vehicle. As far back as 1912, in the *U.S. v. Juanillo*[25], the Court has recognized that an automobile is capable of great speed, greater than that of ordinary vehicles hauled by animals, "and beyond doubt it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of the people who travel on such roads."[26] In the same case, the Court emphasized:

> A driver of an automobile, under such circumstances, is required to use a greater degree of care than drivers of animals, for the reason that the machine is capable of greater destruction, and furthermore, it is absolutely under the power and control of the driver; whereas, a horse or other animal can and does to some extent aid in averting an accident. It is not pleasant to be obliged to slow down automobiles to accommodate persons riding, driving, or walking. It is probably more agreeable to send the machine along and let the horse or person get out of the way in the best manner possible; but it is well to understand, if this course is adopted and an accident occurs, that the automobile driver will be called upon to account for his acts. An automobile driver must at all times use all the care and caution which a careful and prudent driver would have exercised under the circumstances.[27]

American jurisprudence has had occasion to explicitly rule on the relationship between the motorist and the cyclist. Motorists are required to exercise ordinary or reasonable care to avoid collision with bicyclists.[28] While the duty of using ordinary care falls alike on the motorist and the rider or driver of a bicycle, it is obvious, for reasons growing out of the inherent differences in the two vehicles, that more is required from the former to fully discharge the duty than from the latter.[29]

The Code Commission was cognizant of the difference in the natures and attached responsibilities of motorized and non-motorized vehicles. Art. 2185 was not formulated to compel or ensure obeisance by all to traffic rules and regulations. If such were indeed the evil sought to be remedied or guarded against, then the framers of the Code would have expanded the provision to include non-motorized vehicles or for that matter, pedestrians. Yet, that was not the case; thus the need arises to ascertain the peculiarities attaching to a motorized vehicle within the dynamics of road travel. The fact that there has long existed a higher degree of diligence and care imposed on motorized vehicles, arising from the special nature of motor vehicle, leads to the inescapable conclusion that the qualification under Article 2185 exists precisely to recognize such higher standard. Simply put, the standards applicable to motor vehicle are not on equal footing with other types of vehicles.

Thus, we cannot sustain the contention that Art. 2185 should apply to non-

motorized vehicles, even if by analogy. There is factual and legal basis that necessitates the distinction under Art. 2185, and to adopt Añonuevo's thesis would unwisely obviate this distinction.

Even if the legal presumption under Article 2185 should not apply to Villagracia, this should not preclude any possible finding of negligence on his part. While the legal argument as formulated by Añonuevo is erroneous, his core contention that Villagracia was negligent for failure to comply with traffic regulations warrants serious consideration, especially since the imputed negligent acts were admitted by Villagracia himself.

The Civil Code characterizes negligence as the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[30] However, the existence of negligence in a given case is not determined by the personal judgment of the actor in a given situation, but rather, it is the law which determines what would be reckless or negligent.[31]

Añonuevo, asserts that Villagracia was negligent as the latter had transgressed a municipal ordinance requiring the registration of bicycles and the installation of safety devices thereon. This view finds some support if anchored on the long standing principle of *negligence per se.*

The generally accepted view is that the violation of a statutory duty constitutes negligence, negligence as a matter of law, or *negligence per se*.[32] In *Teague vs. Fernandez,*[33] the Court cited with approval American authorities elucidating on the rule:

> "The mere fact of violation of a statute is not sufficient basis for an inference that such violation was the proximate cause of the injury complained. However, if the very injury has happened which was intended to be prevented by the statute, it has been held that violation of the statute will be deemed to be the proximate cause of the injury." (65 C.J.S. 1156)
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> "The generally accepted view is that violation of a statutory duty constitutes negligence, negligence as a matter of law, or, according to the decisions on the question, negligence per se, for the reason that non-observance of what the legislature has prescribed as a suitable precaution is failure to observe that care which an ordinarily prudent man would observe, and, when the state regards certain acts as so liable to injure others as to justify their absolute prohibition, doing the forbidden act is a breach of duty with respect to those who may be injured thereby; or, as it has been otherwise expressed, when the standard of care is fixed by law, failure to conform to such standard is negligence, negligence *per se* or negligence in and of itself, in the absence of a legal excuse. According to this view it is immaterial, where a statute has been violated, whether the act or omission constituting such violation would have been regarded as negligence in the absence of any statute on the subject or whether there was, as a matter of fact, any reason to anticipate that injury would result from such violation. x x x." (65 C.J.S. pp.623-628)