

SECOND DIVISION

[G.R. No. 120874, July 31, 2003]

**NAPOLEON TUGADE, SR., AND RIZALINA FABRO-TUGADE,
SUBSTITUTED BY HER HEIRS, NAMELY, NAPOLEON SR.,
NAPOLEON JR., AND ZENAIDA, ALL SURNAMED TUGADE,
PETITIONERS, VS. COURT OF APPEALS AND PANGASINAN
ELECTRIC COOPERATIVE, INC., RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

While this Court is not a trier of facts, there are instances however when we are called upon to re-examine the factual findings of the trial court and the Court of Appeals and weigh, after considering the records of the case, which of the conflicting findings is more in accord with law and justice.^[1] Such is the case at bar.

The antecedent facts of this case are as follows:

On June 12, 1980 at around 12:00 noon, Engr. Henry Tugade of the Pangasinan Electric Cooperative, Inc. (Panelco) rode in a company rover jeep together with four other employees bound from the Panelco compound in Bani to Bolinao, Pangasinan. Somewhere in Tiep, Pangasinan, a Dagupan bus that was also headed for Bolinao, began to follow the rover jeep. While the bus was trying to overtake the jeep, the latter turned turtle and caused four of its five occupants to fall out of the jeep causing the death of Tugade and another passenger by the name of Consuelo Estolonio.^[2]

Separate cases for damages, docketed as Civil Cases Nos. A-1368 and A-1384 were filed by the heirs of the two deceased before the Regional Trial Court of Pangasinan against Panelco and Dagupan Bus Co. and their respective drivers, Honorato Areola and Renato Quiambao. It is Civil Case No. A-1368 filed by the heirs of Henry Tugade, which is now the subject of the present petition.

The Regional Trial Court of Pangasinan (Branch 55) held Panelco and its driver liable, thus:

As a consequence and in view of the evidence on record, the Court holds and so finds that the accident occurred due to the fault or negligence of Panelco and its driver Honorato Areola. The negligence of Panelco consists in having allowed its rover jeep which is mechanically defective, unsafe and not roadworthy to be operated on a highway. On the other hand, the defendant-driver Honorato Areola was likewise, negligent in driving a vehicle which was not roadworthy, unsafe and with a mechanical defect.

The Court finds that the defendants Panelco and Honorato Areola are liable to pay to the plaintiffs in Civil Case No. A-1368 damages, as follows: actual damages, P99,131.00 (Exhibits "H" to "H-3", "I" to "I-4" and "K"), attorney's fees, P20,000.00, moral damages, P20,000.00 and exemplary damages, P10,000.00

As to loss of earning capacity, it has been held in Villa-Rey Transit vs. Court of Appeals, 31 SCRA 511, that this is based on net earnings and not gross earnings. No evidence was introduced to show the net earnings. However, under the Circumstances, the Court holds that a monthly net earning of P500.00 would be reasonable. Using the formula in the Villa-Rey case, the life expectancy of the late Henry Tugade would be 36 years, hence the Court awards P216,000.00 for loss of earning capacity.

WHEREFORE, the Court hereby renders judgment:

1. Dismissing the complaint and cross-claim as against Dagupan Bus in Civil Case No. A-1368;
2. Dismissing the complaint in Civil Case No. A-1384;
3. In Civil Case No. A-1368, ordering the defendants Pangasinan Electric Cooperative, Inc., and Honorato Areola to pay, jointly and severally, to the plaintiffs, the following:

P 99,131.00 as actual damages;
216,000.00 for loss of earning capacity;
20,000.00 moral damages; and
10,000.00 exemplary damages; and
20,000.00 attorney's fees

With costs against said defendants.^[3]

In arriving at its decision, the trial court explained that:

xxx Rosie Castrence, a passenger of Bus No. 244 who saw the accident testified categorically that the rover jeep turned turtle in front of the Dagupan Bus when the jeep was about 5 meters in front of the Bus and the jeep turned turtle even without being bumped by the Dagupan Bus. The Court considers this witness as an unbiased witness as she appears not to be an interested party. She was also in a good position to observe in detail what actually happened at the scene of the accident as she was seated on the right front seat of the bus. The Court believes this witness more than the other witnesses who do not appear to be disinterested.

Furthermore, it is not credible that if the rover jeep was hit on its left rear, it will turn turtle on its left side. The natural effect or tendency is for the jeep to be pushed or even thrown towards its right side. If the jeep turned turtle towards the left, it must have been due to some other cause than being hit by the bus on its left side.

The physical facts which do not lie as well as testimonial evidence

support the stand of Dagupan Bus that the bus did not hit the left rear of the rover jeep.

If the bus did not hit the left rear of the jeep what then caused the latter to turn turtle. There is merit in the contention of defendant Dagupan Bus that the cause was due to some mechanical defect. By Defendant Areola's own admission, the rover jeep was being fixed by the Chief mechanic at the motor pool of Panelco, when he arrived at their compound, and that the jeep was "Quite old".

Likewise, Rosie Castrence also testified that when she first saw the Panelco jeep at Tiep, Bani, Pangasinan, the jeep was already zig-zagging and wiggling, a sign that indeed the jeep had some mechanical defect.

Another mark of a mechanical defect in the jeep was the fact that the right front wheel and rear wheel of the jeep were detached because their spindles were broken. This came from the mouth of Panelco's witness Florencio Celeste.

The next issue to be resolved is what was the cause of death of Henry Tugade? Plaintiff's theory is, of course, that Henry Tugade died because he was run over and pinned under the left front wheel of Dagupan Bus No. 244 crushing his head and upper body. This is the same theory of defendants Panelco and Areola. Defendants Dagupan Bus and Quiambao deny this claim and their theory is that Henry Tugade's death was caused by the violent impact of his head against the hard pavement of the road when he was thrown out of the rover jeep.

The plaintiff's theory is, however, contradicted by their own medico legal expert Dr. Wilfredo Nazareno who testified positively that the fatal injury which caused the death of Henry Tugade were the fractures on his head which could have been due to the impact of the head against the asphalted road.

Again plaintiff's theory is contradicted by Panelco's own witness Florencio Celeste, Chief Engineer, who was the only one who did not fall out of the jeep, when he testified that the left front wheel of the bus did not rest on the head of Henry Tugade and the wheel of the bus did not run over the head of the victim.

Rosie Castrence, a disinterested witness, also declared that the left front tire of the bus did not run over the head of Henry Tugade.^[4]

Petitioners went to the Court of Appeals questioning only the award of damages and attorney's fees.^[5] They claimed that the lower court erred in: finding that the monthly earnings of the late Henry Tugade at the time of his death was only P500.00; disregarding the evidence on record showing the monthly earnings of the late Henry Tugade; not considering the social, educational and economic status of the plaintiffs in its assessment of the moral and exemplary damages; and setting the sum of P20,000.00 as attorney's fees.^[6]

Respondent Panelco also appealed to the Court of Appeals from the decision of the trial court and assailed its ruling that the negligence of Panelco and its driver was the proximate cause of the accident.^[7]

In its decision dated September 7, 1994,^[8] the Court of Appeals reversed the findings of the trial court, declared that Dagupan Bus, as an employer, had exercised due diligence in the selection and supervision of its employees and disposed of the case in this wise:

WHEREFORE, in view of all the foregoing, the decision of the court a quo is reversed, but only insofar as it holds defendant Pangasinan Electric Cooperative, Inc. liable, and defendant Renato Quiambao is ordered to pay to defendant-appellant Pangasinan Electric Cooperative, Inc., P7,500.00 as temperate damages, P10,000.00 as attorney's fees and costs of suit.^[9]

The appellate court explained, thus:

The testimony of Castrence, on which the court a quo heavily relied in its finding of facts, is contradicted by the greater weight of evidence on record.

First, there is no evidence whatsoever --- for either one of the parties --- of a blown-out tire. What the evidence on record indicates is that the two right wheels of the jeep were detached. The testimony regarding a blown-out tire is not even in consonance with the theory of Dagupan, that is, that the wheels were detached due to mechanical defects.

Second, her testimony that the jeep was wiggling and zigzagging is contradicted by the testimonies of Florencio Celeste **and Cipriano Nacar, passengers of the jeep and witnesses** for plaintiffs Tugade, to the effect that their ride was smooth and normal. (TSN, September 29, 1983, pp. 10, 43 & 66; November 20, 1984, p. 7)

Third, her testimony regarding the sitting arrangement of passengers of the jeep is contradicted by the testimony of Cipriano Nacar, passenger of the jeep and witness for plaintiffs Tugade. According to Nacar, he and Estolonio were seated at the rear of the jeep; the driver Areola was behind the steering wheel, with Celeste to his right and Tugade on the rightmost. In other words, Celeste was between Areola and Tugade, and no one was seated to the left of the driver. (TSN, September 29, 1983, pp. 9-10)

Fourth, her testimony that Tugade's head was about one **foot from the left front tire of the bus is likewise contradicted by** the testimonies of Cipriano Nacar and Honorato Areola that the tire **of the bus was partly resting on the head of Tugade. In fact, the** bus driver Renato Quiambao even had to back up the bus so that Tugade's body may be pulled out from below. (ibid., pp. 22-23)

Fifth, her testimony that Tugade's shirt was checkered is also contradicted by Exhibit G, a photograph of the deceased as he lay on the

ground. The photograph shows Tugade wearing a plain white shirt.

Finally, her testimony that she did not see Estolonio after the accident because the latter was inside the jeep is again contradicted by the finding of the court a quo that "all the passengers of the rover jeep were thrown out of the vehicle except **Florencio Celeste and the body of Henry Tugade landed on the left** lane of the road and was in front of the left front wheel of Bus No. 244." (underscoring ours, Decision, p. 2) In other words, Estolonio, just like Tugade, was sprawled on the ground. (ibid., p. 22)

Castrence's testimony is also marred by improbabilities.

First, she claims to have noticed the color of Tugade's pants who was seated --- in the front of the jeep. It is quite improbable that Castrence, being seated inside the bus, could see the color of the pants of Tugade who was seated on the front seat of the jeep. Second, while she noticed the passengers in the front of the jeep --- indeed she even noticed the color of the pants one of them was wearing --- she could not tell whether or not there were passengers at the back. Third, it is also improbable that the driver and the passengers of the jeep simply continued with their journey, **oblivious to the wiggling and zigzagging of their vehicle.**

Moreover, even disregarding the incredibility of Castrence's testimony, still the version that the accident was due to a mechanical defect that allowed the wheels to be detached cannot be given credence. If the cause of the accident was that both wheels on the right side were detached, then the jeep would not have turned turtle to its left, but to its right. If there had been no wheels to support its right side, the jeep should have turned turtle to its right, but it turned to its left instead.

The court a quo reasons that "it is not credible that if the rover jeep was hit on its left rear, it will turn turtle on its left side. The natural effect or tendency is for the jeep to be pushed or even thrown towards its right side." (Decision, p. 3) The court a quo, **however, seems to have disregarded the testimony of Honorato Areola** that the jeep first swerved to the right, then to the left. **(TSN, October 15, 1984, p. 48)** **To be noted also is** that a jeep is inherently maneuverable, and may easily swerve from side to side when hit from its left rear portion. Moreover, after the accident, both the jeep and the bus were at the left side of the highway. If the bus were not attempting to overtake the jeep, why then was it at the left side of the highway?

As may be seen from the foregoing, the court a quo failed to take into account the discrepancies and inconsistencies of Castrence's testimony vis-à-vis established facts and other evidence on record.

Moreover, the court a quo misappreciated the testimony of Areola that the jeep was being checked up at the Panelco motor pool, and interpreted such testimony to mean that the jeep was being fixed or repaired due to a mechanical defect. First, the mere fact that the jeep was at the motor pool does not mean that it was there due to a