460 Phil. 381

THIRD DIVISION

[G.R. No. 149149, October 23, 2003]

ERNESTO SYKI, PETITIONER, VS. SALVADOR BEGASA, RESPONDENT.

D E C I S I O N

CORONA, J.:

Assailed in this petition for review under Rule 45 of the Rules of Court is the decision[1] dated January 31, 2001 of the Court of Appeals, affirming the decision dated May 5, 1998 of the Regional Trial Court of Negros Occidental, Branch 48, Bacolod City, in Civil Case No. 7458 for damages. The trial court awarded actual and moral damages to herein respondent Salvador Begasa who suffered injuries in an accident due to the negligence of Elizalde Sablayan, the truck driver of petitioner Ernesto Syki.

The facts follow.

On June 22, 1992, around 11:20 a.m., near the corner of Araneta and Magsaysay Streets, Bacolod City, respondent Salvador Begasa and his three companions flagged down a passenger jeepney driven by Joaquin Espina and owned by Aurora Pisuena. While respondent was boarding the passenger jeepney (his right foot already inside while his left foot still on the boarding step of the passenger jeepney), a truck driven by Elizalde Sablayan and owned by petitioner Ernesto Syki bumped the rear end of the passenger jeepney. Respondent fell and fractured his left thigh bone (femur). He also suffered lacerations and abrasions in his left leg, as follows:

1. Fracture left femur, junction of middle and distal third, comminuted.

2. Lacerated wounds, left poplitial 10 cm. left leg anterior 2.5 cm.

3. Abrasion left knee.[2]

On October 29, 1992, respondent filed a complaint for damages for breach of common carrier's contractual obligations and quasi-delict against Aurora Pisuena, the owner of the passenger jeepney, herein petitioner Ernesto Syki, the owner of the truck, and Elizalde Sablayan, the driver of the truck.

After hearing, the trial court dismissed the complaint against Aurora Pisuena, the owner and operator of the passenger jeepney but ordered petitioner Ernesto Syki and his truck driver, Elizalde Sablayan, to pay respondent Salvador Begasa, jointly and severally, actual and moral damages plus attorney's fees as follows:

1. Actual damages of P48,308.20 less the financial assistance given by defendant Ernesto Syki to plaintiff Salvador Begasa in the amount

of P4,152.55 or a total amount of P44,155.65;

2. The amount of P30,000.00 as moral damages;

3. The amount of P20,000.00 as reasonable attorney's fees.[3]

Petitioner Syki and his driver appealed to the Court of Appeals. However, the appellate court found no reversible error in the decision of the trial court and affirmed the same *in toto.*[4]
The appellate court also denied their motion for reconsideration.[5]

Aggrieved, petitioner Ernesto Syki filed the instant petition for review, arguing that the Court of Appeals erred in not finding respondent Begasa guilty of contributory negligence. Hence, the damages awarded to him (respondent) should have been decreased or mitigated. Petitioner also contends that the appellate court erred in ruling that he failed to observe the diligence of a good father of a family in the selection and supervision of his driver. He asserts that he presented sufficient evidence to prove that he observed the diligence of a good father of a family in selecting and supervising the said employee, thus he should not be held liable for the injuries sustained by respondent.

The petition has no merit.

Article 2180 of the Civil Code provides:

x x x x x x x x x

> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

> The responsibility treated in this article shall cease when the persons herein mentioned prove they observed all the diligence of a good father of a family to prevent damage.

From the above provision, when an injury is caused by the negligence of an employee, a legal presumption instantly arises that the employer was negligent in the selection and/or supervision of said employee. The said presumption may be rebutted only by a clear showing on the part of the employer that he exercised the diligence of a good father of a family in the selection and supervision of his employee. If the employer successfully overcomes the legal presumption of negligence, he is relieved of liability.[6]
In other words, the burden of proof is on the employer.

The question is: how does an employer prove that he indeed exercised the diligence of a good father of a family in the selection and supervision of his employee? The case of *Metro Manila Transit Corporation vs. Court of Appeals*[7] is instructive*:*

> In fine, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such

amount of evidence required by law to obtain a favorable judgment. . .In making proof in its or his case, it is paramount that the best and most complete evidence is formally entered.

Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees. *Petitioner's attempt to prove its "deligentissimi patris familias" in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.*

Our view that the evidence for petitioner MMTC falls short of the required evidentiary quantum as would convincingly and undoubtedly prove its observance of the diligence of a good father of a family has its precursor in the underlying rationale pronounced in the earlier case of *Central Taxicab Corp. vs. Ex-Meralco Employees Transportation Co., et. al.*, set amidst an almost identical factual setting, where we held that:

> The failure of the defendant company to produce in court any `record' or other documentary proof tending to establish that it had exercised all the diligence of a good father of a family in the selection and supervision of its drivers and buses, notwithstanding the calls therefore by both the trial court and the opposing counsel, argues strongly against its pretensions.
>
> We are fully aware that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has by his negligence, caused damage to another. x x x *(R)educing the testimony of Albert to its proper proportion, we do not have enough trustworthy evidence left to go by.* We are of the considerable opinion, therefore, that the believable evidence on the degree of care and diligence that has been exercised in the selection and supervision of Roberto Leon y Salazar, is not legally sufficient to overcome the presumption of negligence against the defendant company. (*emphasis ours*)

The 1993 ruling in *Metro Manila Transit Corporation* was reiterated in a recent case again involving the Metro Manila Transit Corporation,[8] thus*:*

> In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, with respect to the supervision of employees, employers should formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. *To establish these factors in a trial involving the issue of vicarious*