

FIRST DIVISION

[G.R. No. 131541, October 20, 2000]

**THE RMOCHEM INCORPORATED AND JEROME O. CASTRO,
PETITIONERS, VS. LEONORA NAVAL AND THE COURT OF
APPEALS, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This damage suit arose from a collision of vehicles based on the following facts:

"(O)n May 10, 1992, at around 12:00 o'clock midnight, Eduardo Edem^[1] was driving a "Luring Taxi" along Ortigas Avenue, near Rosario, Pasig, going towards Cainta. Prior to the collision, the taxicab was parked along the right side of Ortigas Avenue, not far from the Rosario Bridge, to unload a passenger. Thereafter, the driver executed a U-turn to traverse the same road, going to the direction of EDSA. At this point, the Nissan Pathfinder traveling along the same road going to the direction of Cainta collided with the taxicab. The point of impact was so great that the taxicab was hit in the middle portion and was pushed sideward, causing the driver to lose control of the vehicle. The taxicab was then dragged into the nearby Question Tailoring Shop, thus, causing damage to the said tailoring shop, and its driver, Eduardo Eden, sustained injuries as a result of the incident."^[2]

Private respondent, as owner of the taxi, filed a damage suit against petitioner, Thermochem Incorporated, as the owner of the Nissan Pathfinder, and its driver, petitioner Jerome Castro. After trial, the lower court adjudged petitioner Castro negligent and ordered petitioners, jointly and severally, to pay private respondent actual, compensatory and exemplary damages plus attorney's fees and costs of suit. The dispositive portion of the Decision of the Regional Trial Court, Branch 150 of Makati City dated September 25, 1995, reads:

In view of all the foregoing, judgment is hereby rendered ordering the defendants, jointly and severally, to pay plaintiff the following:

1. The amount of P47,850.00 as actual damages;
2. The amount of P45,000.00 as compensatory damages for unrealized income;
3. The amount of P10,000.00 as exemplary damages;
4. The amount of P10,000.00 as and for attorney's fees; and
5. Cost of suit.

SO ORDERED.^[3]

On appeal, the Court of Appeals affirmed the judgment of the court *a quo*.^[4] Hence, this petition for review on certiorari. The petition was denied on February 2, 1998 for failure to submit an explanation why no personal service of copies of certain pleadings was made as required by Rule 13, Section 11 of the 1997 Rules of Civil Procedure.^[5] Upon petitioners' motion for reconsideration, the petition was reinstated and private respondent was required to file her Comment in a Resolution dated June 22, 1998.^[6] A copy of the said Resolution was sent by registered mail to private respondent's counsel but the same was returned to sender.^[7] In a separate Resolution issued on the same date, this Court ordered that a copy of the June 22, 1998 Resolution be served personally on private respondent's counsel.^[8] As the said Resolution was also returned unserved, "the Court Resolved to consider the said Resolution as SERVED."^[9] After more than a year, no Comment has been filed. Considering that private respondent was given only ten (10) days to file her Comment, that period had already lapsed ten days after the June 23, 1999 Resolution which stated that the June 22, 1998 resolution as "served".

Service of notice or other pleadings which are required by the rules to be furnished to the parties must be made on their last address on record. If they are represented by counsel, such notices shall be sent instead to the counsel's last given address on record in the absence of a proper and adequate notice to the court of a change of address,^[10] unless service upon the party himself is ordered by the court.^[11] It is the party and his counsel's responsibility to devise a system for the receipt of mail intended for them^[12] just as it is the duty of counsel to inform the court of a change in his address. In the case at bar, private respondent's counsel never notified the Court of any change of his address or whether he no longer holds office in his last address of record. Neither was the Court informed if his ties with his client has been severed. Insofar as the Court is concerned, the last address on record is the place where all notices shall be served until the Court is officially informed to the contrary. What is the effect of the failure of a private respondent to comply with a court order to file Comment?

Courts are given the option to dispense with the filing of the Comment and consider the case as deemed submitted for decision. Under Rule 46, Section 7 of the 1997 Rules of Civil Procedure,^[13] when the respondent in an original action filed with the court fails to file its comment, the case may be decided on the basis of the evidence on record without prejudice to disciplinary action against the disobedient party. Concomitant thereto is the rule that pursuant to Rule 51, Section 1(B)(1),^[14] where no comment is filed upon the expiration of the period to comment in an original action or a petition for review, the case shall be deemed submitted for decision. Both provisions are applicable to a petition for review filed with the Supreme Court as provided in Rule 56, Section 2(a) of the Rules.^[15] Moreover, a lawyer who fails to submit the required Comment manifests willful disobedience to a lawful order of the Supreme Court, a clear violation of the Canon of Professional Ethics.^[16] Counsel must remember that his actions and omissions are binding on his client.^[17] He should not neglect legal matters entrusted to him as his negligence therefrom shall render him liable.^[18]

The petition lacks merit. The issue of whether a party is negligent is a question of fact. It is a time-honored precept that the Supreme Court is not a trier of facts,^[19] although it has authority to review and reverse factual findings of lower courts if these do not conform to evidence.^[20] It is also settled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, is binding on the Supreme Court^[21] and generally conclusive,^[22] especially if it has not been adequately shown that no significant facts and circumstances were overlooked or disregarded which when considered would have altered the outcome of the disposition.

The driver of the oncoming Nissan Pathfinder vehicle was liable and the driver of the U-turning taxicab was contributorily liable. Contrary to petitioners' contention, the fact that a party had no opportunity to avoid the collision is of his own making and this should not relieve him of liability.^[23] From petitioner Castro's testimonial admissions, it is established that he was driving at a speed faster than 50 kilometers per hour because it was a downhill slope coming from the Rosario bridge. But as he allegedly stepped on the brake, it locked causing his Nissan Pathfinder to skid to the left and consequently hit the taxicab. The sudden malfunction of the vehicle's brake system is the usual excuse of drivers involved in collisions which are the result of speedy driving, particularly when the road is downhill.

Malfunction or loss of brake is not a fortuitous event. Between the owner and his driver, on the one hand, and third parties such as commuters, drivers and pedestrians, on the other, the former is presumed to know about the conditions of his vehicle and is duty bound to take care thereof with the diligence of a good father of the family. A mechanically defective vehicle should avoid the streets. As petitioner's vehicle was moving downhill, the driver should have slowed down since a downhill drive would naturally cause the vehicle to accelerate. Moreover, the record shows that the Nissan Pathfinder was on the wrong lane when the collision occurred. This was a disregard of traffic safety rules. The law considers what would be reckless, blameworthy or negligent in a man of ordinary diligence and prudence and determines liability by that.^[24] Even assuming *arguendo* that loss of brakes is an act of God, by reason of their negligence, the fortuitous event became humanized, rendering the Nissan driver liable for the ensuing damages.^[25]

As mentioned earlier, the driver of the taxi is contributorily liable. U-turns are not generally advisable particularly on major streets. The taxi was hit on its side which means that it had not yet fully made a turn to the other lane. The driver of the taxi ought to have known that vehicles coming from the Rosario bridge are on a downhill slope. Obviously, there was lack of foresight on his part, making him contributorily liable. Most public utility drivers disregard signs and traffic rules especially during the night when traffic enforcers manning the streets disappear with the light. In driving vehicles, the primary concern should be the safety not only of the driver or his passengers, but also his fellow motorists.

Considering the contributory negligence of the driver of private respondent's taxi, the award of P47,850.00, for the repair of the taxi, should be reduced in half. All other awards for damages are deleted for lack of merit.

WHEREFORE, based on the foregoing, the assailed decision is **MODIFIED.** Petitioners are ordered to pay, jointly and severally, to private respondent the amount of P23,925.00 as actual damages. All other awards are **DELETED.**