

THIRD DIVISION

[G.R. No. 138296, November 22, 2000]

VIRON TRANSPORTATION CO., INC., PETITIONER, VS. ALBERTO DELOS SANTOS Y NATIVIDAD AND RUDY SAMIDAN, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* which seeks to reverse and set aside: (1) the decision of the Court of Appeals^[1] promulgated on October 27, 1998 in CA-G.R. CV No. 54080 entitled "Viron Transportation Co., Inc. vs. Alberto delos Santos and Rudy Samidan" affirming the decision of the Regional Trial Court of Manila^[2] in Civil Case No. 93-67283 and (2) the resolution of the Court of Appeals promulgated on April 14, 1999 denying the motion for reconsideration.

The said civil case is an action to recover damages based on *quasi-delict* filed as a result of a vehicular accident in the afternoon of August 16, 1993 between a passenger bus owned by petitioner Viron Transportation Co., Inc. and a Forward Cargo Truck owned by private respondent Rudy Samidan.

The conflicting versions of the accident were summarized by the trial court and adopted by the Court of Appeals in the assailed decision. The version of petitioner is as follows:

"Plaintiff, a public utility transportation company, is the registered owner of Viron Transit Bus No. 1080, with Plate No. TB-AVC-332; while the defendant Rudy Samidan is the registered owner of the Forward Cargo Truck with Plate No. TDY-524 which, at the time of the vehicular accident in question, was driven and operated by the defendant Alberto delos Santos y Natividad. On August 16, 1993, at around 2:30 in the afternoon, the aforesaid bus was driven by plaintiff's regular driver Wilfredo Villanueva along MacArthur Highway within the vicinity of Barangay Parsolingan, Gerona, Tarlac coming from the North en route to its destination in Manila. It was following the Forward Cargo Truck proceeding from the same direction then being driven, as aforesaid, by the defendant Alberto delos Santos. The cargo truck swerved to the right shoulder of the road and, while about to be overtaken by the bus, again swerved to the left to occupy its lane. It was at that instance that the collision occurred, the left front side of the truck collided with the right front side of the bus causing the two vehicles substantial damages."^[3]

On the other hand, the version of private respondents is as follows:

"Defendant Alberto delos Santos was the driver of defendant Rudy Samidan of the latter's vehicle, a Forward Cargo Truck with Plate No. TDY-524, on that fateful day in question. At about 12:30 in the afternoon of August 16, 1993, he was driving said truck along the National Highway within the vicinity of Barangay Parsolingan, Gerona, Tarlac. The Viron bus with Body No. 1080 and Plate No., TB-AVC-332, driven by Wilfredo Villanueva y Gaudia, tried to overtake his truck, and he swerved to the right shoulder of the highway, but as soon as he occupied the right lane of the road, the cargo truck which he was driving was hit by the Viron bus on its left front side, as the bus swerved to his lane to avoid an incoming bus on its opposite direction. With the driver of another truck dealing likewise in vegetables, Dulnuan, the two of them and the driver of the Viron bus proceeded to report the incident to the Gerona Police Station. A Vehicular Traffic Report was prepared by the police (See Exhibit "D"), with a Sketch of the relative positions of the circumstances leading to the vehicular collision. x x x."^[4]

After trial, the lower court dismissed petitioner's complaint and sustained the private respondents' counterclaim for damages. It ordered the petitioner to pay the following amounts:

1. P19,500.00, with interest thereon at 6% per annum from the date of complaint, as actual damages, until the same shall have been fully paid and satisfied;
2. P10,000.00 as additional compensatory damages for transportation and accommodations during the trial of this case;
3. P10,000.00 for and as attorney's fees; and
4. Costs of suit."^[5]

Not satisfied therewith, petitioner appealed to the Court of Appeals which as mentioned at the outset affirmed *in toto* the decision of the lower court. Its motion for reconsideration having been denied, petitioner came to us claiming that the Court of Appeals gravely erred

- a) ... IN FINDING THAT THE ACCIDENT WAS DUE TO THE FAULT OF THE PETITIONER'S DRIVER;
- b) ... IN FINDING THE PETITIONER LIABLE FOR DAMAGES WHEN THE COUNTERCLAIM FAILED TO STATE A CAUSE OF ACTION FOR THERE IS NO AVERMENT WHATSOEVER THEREIN THAT SAID PETITIONER FAILED TO EXERCISE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS DRIVERS OR EMPLOYEES;
- c) ... IN AWARDING COMPENSATORY OR ACTUAL DAMAGES AS WELL AS,

TRAVELLING EXPENSES AND ATTORNEY'S FEES WHEN THE SAME WERE NOT SUBSTANTIATED OR BUTTRESSED BY THE EVIDENCE ON RECORD;

d) ... IN AFFIRMING THE DECISION OF THE COURT A QUO DENYING PETITIONER'S MOTION TO PRESENT REBUTTAL EVIDENCE.^[6]

We resolved to give due course to the petition and required the parties to submit their respective memoranda after due consideration of the allegations, issues and arguments adduced in the petition, the comment thereon by the private respondents, and the reply to the comment filed by the petitioner. The petitioner and private respondents filed their respective memoranda in due time.

The first imputed error is without merit. Petitioner endeavors to have this Court review the factual findings of the trial court as sustained by the Court of Appeals finding the driver of the Viron passenger bus at fault as the collision resulted from the latter's failed attempt to overtake the cargo truck.

We are unable to sustain petitioner's contention. The rule is settled that the findings of the trial court especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.^[7] The Supreme Court will not assess and evaluate all over again the evidence, testimonial and documentary adduced by the parties to an appeal particularly where, such as here, the findings of both the trial court and the appellate court on the matter coincide.^[8] Indeed, petitioner has failed to show compelling grounds for a reversal of the following findings and conclusions of the trial court and the Court of Appeals:

"There is no doubt whatsoever, in the mind of the Court, on the basis of the documentary evidence (Exhibits "D", "4" and "5") and the testimonies of the witnesses, that the vehicular collision was due to the negligence of plaintiff's regular driver, Wilfredo Villanueva y Gaudia, at that time. The cargo truck was on its proper lane at the time of the collision. In fact, the cargo truck even swerved to the right shoulder of the road to give much room for the Viron bus to pass. Notwithstanding the condition of the road and the in-coming Dagupan Bus from the opposite direction, the Viron bus nonetheless proceeded to overtake the cargo truck, bringing about the collision. The evidence is uniform as to that fact. Indeed, no witnesses for the plaintiff ever contradicted the obtrusive fact that it was while in the process of overtaking the cargo truck that the Viron bus collided with the former vehicle.

It is here well to recall that the driver of an overtaking vehicle must see to it that the conditions are such that an attempt to pass is reasonably safe and prudent, and in passing must exercise reasonable care. In the absence of clear evidence of negligence on the part of the operator of the overtaken vehicle, the courts are inclined to put the blame for an accident occurring while a passage is being attempted on the driver of the overtaking vehicle (People vs. Bolason, (C.A.) 53 Off. Gaz. 4158). As already intimated elsewhere in this judgment, no evidence was presented by the plaintiff to even intimate at the negligence of the driver of the cargo truck."^[9]

It is plain to see that the fault or negligence was attributable to the driver of the Viron passenger bus. Petitioner proceeds to attack, albeit feebly, the credibility of the two witnesses presented by private respondents, namely, Alberto delos Santos himself, who was then the driver of the Forward Cargo Truck and a certain Manuel Dulnuan, who was then travelling along the same highway coming from the opposite direction when the accident occurred. According to petitioner, the two witnesses contradicted each other when "witness Dulnuan testified that the petitioner's passenger bus while attempting to overtake the respondents' truck, noticed the Dagupan passenger bus coming from the opposite direction and to avoid hitting said passenger bus, the Viron Transit passenger bus swerved to the right, hitting in the process the front left side portion of the respondents' truck;" while, "witness Alberto delos Santos testified that prior to the accident, he swerved his truck to the right shoulder of the road (western lane) and when he attempted to return to his lane, the accident happened." Contrary to petitioner's assertion, the testimonies of the two witnesses complement, if not corroborate each other. The Viron passenger bus collided with the cargo truck in a vain attempt to overtake the latter. At the sight of an oncoming bus in the opposite direction, the Viron passenger bus swerved to the right lane which was then occupied by the cargo truck resulting in the collision of the two vehicles. In reference to Alberto delos Santos' testimony, the lower court pointed out that the said driver of the cargo truck was on its proper lane at the time of impact, and even swerved earlier toward the right shoulder of the road just to give room to the bus. In any event, it is doctrinally entrenched that the assessment of the trial judge as to the issue of credibility binds the appellate court because he is in a better position to decide the issue, having heard the witnesses and observed their deportment and manner of testifying during the trial, except when the trial court has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case, or where the assessment is clearly shown to be arbitrary.^[10] Petitioner has not shown this case to fall under the exception.

The second imputed error is without merit either. Petitioner contends that private respondents' counterclaim failed to state a cause of action for there is no averment therein that petitioner failed to exercise the diligence of a good father of a family in the selection and supervision of its drivers or employees. It is to be noted that petitioner Viron Transportation Co., Inc., as the registered owner of the bus involved in the subject vehicular accident originally brought the action for damages against private respondents. Private respondents as defendants in the court *a quo* denied any liability and filed instead a counterclaim for damages claiming that it was the driver of the bus who was at fault in the operation of the bus. We find that the counterclaim of private respondents alleges the ultimate facts constituting their cause of action. It is not necessary to state that petitioner was negligent in the supervision or selection of its employees, as its negligence is presumed by operation of law. The liability of the employer was explained in a case thus:

"As employers of the bus driver, the petitioner is, under Article 2180 of the Civil Code, directly and primary liable for the resulting damages. The presumption that they are negligent flows from the negligence of their employee. That presumption, however, is only *juris tantum*, not *juris et de jure*. Their only possible defense is that they exercised all the diligence of a good father of a family to prevent the damage. Article