

## SECOND DIVISION

**[ G.R. No. 116617, November 16, 1998 ]**

**METRO MANILA TRANSIT CORPORATION (MMTC), PEDRO A. MUSA, CONRADO TOLENTINO, FELICIANA CELEBRADO AND THE GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONERS, VS. COURT OF APPEALS, SPS. RODOLFO V. ROSALES AND LILY ROSALES, RESPONDENTS.**

**[G.R.NO. 126395. NOVEMBER 16, 1998]**

**RODOLFO V. ROSALES AND LILY R. ROSALES, PETITIONERS, VS. THE COURT OF APPEALS, METRO MANILA TRANSIT CORPORATION (MMTC), PEDRO A. MUSA, CONRADO TOLENTINO, FELICIANA CELEBRADO AND THE GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

These are appeals brought, on the one hand, by the Metro Manila Transit Corporation (MMTC) and Pedro Musa and, on the other, by the spouses Rodolfo V. Rosales and Lily R. Rosales from the decision,<sup>[1]</sup> dated August 5, 1994, of the Court of Appeals, which affirmed with modification the judgment of the Regional Trial Court of Quezon City holding MMTC and Musa liable to the spouses Rosales for actual, moral, and exemplary damages, attorney's fees, and the costs of suit for the death of the latter's daughter. MMTC and Musa in G.R. No. 116617 appeal insofar as they are held liable for damages, while the spouses Rosales in G.R. No. 126395 appeal insofar as the amounts awarded are concerned.

The facts are as follows:

MMTC is the operator of a fleet of passenger buses within the Metro Manila area. Musa was its driver assigned to MMTC Bus No. 27. The spouses Rosales were parents of Liza Rosalie, a third-year high school student at the University of the Philippines Integrated School.

At around a quarter past one in the afternoon of August 9, 1986, MMTC Bus No. 27, which was driven by Musa, hit Liza Rosalie who was then crossing Katipunan Avenue in Quezon City. An eye witness said the girl was already near the center of the street when the bus, then bound for the south, hit her.<sup>[2]</sup> She fell to the ground upon impact, rolled between the two front wheels of the bus, and was run over by the left rear tires thereof.<sup>[3]</sup> Her body was dragged several meters away from the point of impact. Liza Rosalie was taken to the Philippine Heart Center,<sup>[4]</sup> but efforts to revive her proved futile.

Pedro Musa was found guilty of reckless imprudence resulting in homicide and sentenced to imprisonment for a term of 2 years and 4 months, as minimum, to 6 years, as maximum, by the Regional Trial Court of Quezon City.<sup>[5]</sup> The trial court found:

All told, this Court, therefore, holds that the accused, who was then the driver of MMTC Bus No. 027, is criminally responsible for the death of the girl victim in violation of Article 365(2) of the Revised Penal Code. For, in the light of the evidence that the girl victim was already at the center of the Katipunan Road when she was bumped, and, therefore, already past the right lane when the MMTC Bus No. 027 was supposed to have passed; and, since the said bus was then running at a speed of about 25 kilometers per hour which is inappropriate since Katipunan road is a busy street, there is, consequently, sufficient proof to show that the accused was careless, reckless and imprudent in the operation of his MMTC Bus No. 027, which is made more evident by the circumstance that the accused did not blow his horn at the time of the accident, and he did not even know that he had bumped the girl victim and had ran over her, demonstrating thereby that he did not exercise diligence and take the necessary precaution to avoid injury to persons in the operation of his vehicle, as, in fact, he ran over the girl victim who died as a result thereof.<sup>[6]</sup>

The spouses Rosales filed an independent civil action for damages against MMTC, Musa, MMTC Acting General Manager Conrado Tolentino, and the Government Service Insurance System (GSIS). They subsequently amended their complaint to include Feliciano Celebrado, a dispatcher of the MMTC, as a defendant therein. The counsel of MMTC and Musa attempted to introduce testimony that Musa was not negligent in driving Bus No. 27 but was told by the trial judge:

COURT:

That is it. You can now limit your question to the other defendant here but to re-try again the actual facts of the accident, this Court would not be in the position. It would be improper for this Court to make any findings with respect to the negligence of herein driver. You ask questions only regarding the civil aspect as to the other defendant but not as to the accused.<sup>[7]</sup>

The counsel submitted to the ruling of the court.<sup>[8]</sup>

In a decision rendered on March 6, 1990, the Regional Trial Court of Quezon City found MMTC and Musa guilty of negligence and ordered them to pay damages and attorney's fees, as follows:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering defendant Metro Manila Transit Corporation primarily and defendant Pedro Musa subsidiarily liable to plaintiffs-spouses Rodolfo V. Rosales and Lily R. Rosales as follows:

1. Actual damages in the amount of P150,000.00;
2. Moral damages in the amount of P500,000.00;

3. Exemplary damages in the amount of P100,000.00;
4. Attorney's fees in the amount of P50,000.00; and
5. Costs of suit.<sup>[9]</sup>

Both parties appealed to the Court of Appeals. On August 5, 1994, the Court of Appeals affirmed the decision of the trial court with the following modification:

WHEREFORE, except for the modification deleting the award of P150,000.00 as actual damages and awarding in lieu thereof the amount of P30,000.00 as death indemnity, the decision appealed from is, in all other aspects, hereby AFFIRMED.<sup>[10]</sup>

The spouses Rosales filed a motion for reconsideration, which the appellate court, in a resolution, dated September 12, 1996, partly granted by increasing the indemnity for the death of Liza Rosalie from P30,000.00 to P50,000.00. Hence, these appeals.

In G.R. No. 116617, MMTC and Musa assail the decision of the Court of Appeals on the following grounds:

PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION PARTICULARLY IN NOT HOLDING THAT PETITIONER-APPELLANT MMTC EXERCISED THE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS DRIVERS. THIS BEING THE CASE, APPELLANT MMTC IS ENTITLED TO BE ABSOLVED FROM ANY LIABILITY OR AT LEAST TO A REDUCTION OF THE RECOVERABLE DAMAGES.

THE PUBLIC RESPONDENT COURT OF APPEALS, JUST LIKE THE COURT A QUO, OVERLOOKED THE FACT THAT PETITIONER MMTC, A GOVERNMENT-OWNED CORPORATION, COMMITTED NO FRAUD, MALICE, BAD FAITH, NOR WANTON, FRAUDULENT, OPPRESSIVE AND MALEVOLENT ACTUATIONS AGAINST HEREIN RESPONDENTS-APPELLEES.

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION TO HOLD PETITIONER-APPELLANT MMTC PRIMARILY LIABLE TO PRIVATE RESPONDENTS-APPELLEES IN THE AMOUNT OF P500,000 AS MORAL DAMAGES, P100,000 AS EXEMPLARY DAMAGES AND P30,000 BY WAY OF DEATH INDEMNITY.

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE COURT A QUO'S DECISION IN RENDERING JUDGMENT FOR ATTORNEY'S FEES IN THE AMOUNT OF P50,000.00 IN FAVOR OF PRIVATE RESPONDENTS-APPELLEES.

On the other hand, in G.R. No. 126395, the spouses Rosales contend:

The Court of Appeals erred in:

*First*, considering that death indemnity which this Honorable Court set at P50,000.00 is akin to actual damages;

*Second*, not increasing the amount of damages awarded;

*Third*, refusing to hold all the defendants, now private respondents, solidarily liable.

MMTC and Musa do not specifically question the findings of the Court of Appeals and the Regional Trial Court of Quezon City that Liza Rosalie was hit by MMTC Bus No. 27. Nonetheless, their petition contains discussions which cast doubts on this point.

[11] Not only can they not do this as the rule is that an appellant may not be heard on a question not specifically assigned as error, but the rule giving great weight, and even finality, to the factual conclusions of the Court of Appeals which affirm those of the trial court bars a reversal of the finding of liability against petitioners MMTC and Musa. Only where it is shown that such findings are whimsical, capricious, and arbitrary can they be overturned. To the contrary, the findings of both the Court of Appeals and the Regional Trial Court are solidly anchored on the evidence submitted by the parties. We, therefore, regard them as conclusive in resolving the petitions at bar. [12] Indeed, as already stated, petitioners' counsel submitted to the ruling of the court that the finding of the trial court in the criminal case was conclusive on them with regard to the questions of whether Liza Rosalie was hit by MMTC Bus No. 27 and whether its driver was negligent. Rather, the issue in this case turns on Art. 2180 of the Civil Code, which provides that "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." The responsibility of employers for the negligence of their employees in the performance of their duties is primary, that is, the injured party may recover from the employers directly, regardless of the solvency of their employees. [13] The rationale for the rule on vicarious liability has been adumbrated thus:

What has emerged as the modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the tort of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them, and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large. Added to this is the makeweight argument that an employer who is held strictly liable is under the greatest incentive to be careful in the selection, instruction and supervision of his servants, and to take every precaution to see that the enterprise is conducted safely.

[14]

In *Campo v. Camarote*, [15] we explained the basis of the presumption of negligence in this wise:

The reason for the law is obvious. It is indeed difficult for any person injured by the carelessness of a driver to prove the negligence or lack of due diligence of the owner of the vehicle in the choice of the driver. Were we to require the injured party to prove the owner's lack of diligence, the right will in many cases prove illusory, as seldom does a person in the community, especially in the cities, have the opportunity to observe the

conduct of all possible car owners therein. So the law imposes the burden of proof of innocence on the vehicle owner. If the driver is negligent and causes damage, the law presumes that the owner was negligent and imposes upon him the burden of proving the contrary.

Employers may be relieved of responsibility for the negligent acts of their employees within the scope of their assigned tasks only if they can show that "they observed all the diligence of a good father of a family to prevent damage."<sup>[16]</sup> For this purpose, they have the burden of proving that they have indeed exercised such diligence, both in the selection of the employee who committed the quasi-delict and in the supervision of the performance of his duties.

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records.<sup>[17]</sup> 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.<sup>[18]</sup> To establish these factors in a trial involving the issue of vicarious liability, employers must submit concrete proof, including documentary evidence.<sup>[19]</sup>

In this case, MMTC sought to prove that it exercised the diligence of a good father of a family with respect to the selection of employees by presenting mainly testimonial evidence on its hiring procedure. According to MMTC, applicants are required to submit professional driving licenses, certifications of work experience, and clearances from the National Bureau of Investigation; to undergo tests of their driving skills, concentration, reflexes, and vision; and, to complete training programs on traffic rules, vehicle maintenance, and standard operating procedures during emergency cases.<sup>[20]</sup>

MMTC's evidence consists entirely of testimonial evidence (1) that transport supervisors are assigned to oversee field operations in designated areas; (2) that the maintenance department daily inspects the engines of the vehicles; and, (3) that for infractions of company rules there are corresponding penalties.<sup>[21]</sup> Although testimonies were offered that in the case of Pedro Musa all these precautions were followed,<sup>[22]</sup> the records of his interview, of the results of his examinations, and of his service were not presented.

MMTC submitted brochures and programs of seminars for prospective employees on vehicle maintenance, traffic regulations, and driving skills and claimed that applicants are given tests to determine driving skills, concentration, reflexes, and vision,<sup>[23]</sup> but there is no record that Musa attended such training programs and passed the said examinations before he was employed. No proof was presented that Musa did not have any record of traffic violations. Nor were records of daily inspections, allegedly conducted by supervisors, ever presented.

Normally, employers keep files concerning the qualifications, work experience, training, evaluation, and discipline of their employees. The failure of MMTC to present such documentary proof puts in doubt the credibility of its witnesses. What was said in *Central Taxicab Corporation v. Ex-Meralco Employees Transportation Corporation*<sup>[24]</sup> applies to this case: