

## THIRD DIVISION

[ CA-G.R. CV NO. 100687, March 30, 2015 ]

**JOSELITO SAN MIGUEL AND EDELYN A. SAN MIGUEL,  
PLAINTIFFS-APPELLEES, VS. JIMMY CANDO AND ROSALINDA V.  
CANDO, DEFENDANTS,**

**ROSALINDA V. CANDO, GASAT EXPRESS, INC. AND BUNJI L.  
MIYASHIRO, DEFENDANTS-APPELLANTS.**

### **DECISION**

**BARZA, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court, Branch 96, Quezon City, in a case for damages filed by appellees Joselito San Miguel and Edelyn San Miguel (appellees).

John Anthony San Miguel, son of appellees, was a second year student taking up Bachelor of Science in Nursing at Fatima University. On November 1, 2007, at about 3:00 A.M., after his night duty as a service crew at McDonalds, John Anthony was waiting for a public utility vehicle along Commonwealth Avenue, Regalado Extension, Fairview, Quezon City, when he was ran over by Gasat Express Bus (Gasat Express) with Plate No. TWH-802, being driven by Bunji Miyashiro (Miyashiro). Gasat Express is operated by spouses Jimmy Cando and Rosalinda Cando (Sps. Cando) and registered under the name of Fil Daewoo Industries Corp. (Daewoo).

Appellees filed a complaint for damages before the court a quo against appellants-spouses Cando, Gasat Express, Miyashiro and Daewoo.

Appellees averred that Miyashiro was driving in a reckless and incautious manner when he ran over John Anthony causing the latter's death. It was also averred that Miyashiro's employer failed to exercise due diligence in the selection and supervision of its employees. According to appellees, had it not been for the untimely death of their son, he could have attained full maturity, with a nursing degree in college and a lucrative job considering that John Anthony is an intelligent student. Appellees stated that although the grief they suffered is hard to quantify, they prayed that they are entitled the award of compensatory damages in the amount of Php1,000,000.00, moral damages in the amount of Php1,000,000.00, exemplary damages in the amount of Php200,000.00, actual damages, attorney's fees and costs of suit.

After receipt of summons, Sps. Cando and Gasat Express filed their Answer *Ad Cautelam*.<sup>[2]</sup> Jimmy Cando subsequently died. It was qualified in the appellants' answer that Gasat Express is not a corporation but a single proprietorship and Daewoo is the lessor of the bus unit involved in the incident.

Appellants did not deny that the involvement of Gasat Express in the incident. What they denied was Miyashiro was driving recklessly and alleged that he was driving in a careful and cautious manner all the time, taking into account the safety of his passengers and the public in general. Appellants averred that at the time of the incident, John Anthony was not in his physical and mental disposition considering that it was already 3 o'clock in the morning and he just had a hard night work at McDonalds. John Anthony had no adequate sleep or rest that affected his mental and physical faculties. Due to physical fatigue and drowsiness, his senses were not properly functioning, which made him careless and insensitive to his surroundings. Appellants contend that Rosalinda Cando meticulously exercised extraordinary diligence in the selection and supervision of the employees of Gasat Express. According to appellants, Miyashiro is an experienced driver.

Appellants declared that after learning of the incident, Rosalinda Cando, representing Gasat, as a humanitarian gesture, immediately wanted to provide financial assistance to the family of the victim for funeral and burial expenses. Despite said gesture, appellees demanded more monetary consideration but appellants could not provide more. Appellees, however, received the sum of Seventy Thousand Pesos (Php70,000.00) from the appellants' insurance company.

Daewoo separately filed its Answer with Counterclaim and Cross-Claim<sup>[3]</sup>. It alleged that deceased Jimmy Cando leased from Daewoo buses which he operates, one of which is the bus involved in the incident. Daewoo claimed that as the lessee, all matters relative to the use and operation of these buses, including any damages that may arise as a result of the use and operation thereof were Jimmy Cando's responsibility. Daewoo affirmed that under the provisions of their Lease Agreement, Jimmy Cando admits sole responsibility and holds Daewoo free from and against any liability, damages, suits, claims or judgments of whatever kind and nature arising from the use and operation of the buses.

In its cross-claim against spouses Cando, Daewoo stated that it is not in any way connected with the use, operation and possession of the bus involved in the incident that resulted in the death of John Anthony. Daewoo prayed that in the event that judgment be rendered against it ordering to pay appellees the amount of their claims in the complaint, appellants be ordered to pay back to Daewoo whatever amount is paid by the latter to appellees in accordance with said judgment.

After parties filed their pre-trial brief and thereafter manifested that they are adopting in *toto* the contents of their respective pre-trial brief as part of the preliminary conference, the court a quo in its Order dated December 4, 2008,<sup>[4]</sup> terminated the pre-trial conference and set the case for hearing.

Before trial proper could start, Atty. Alexander Cruz made his appearance replacing appellants' former counsel, Atty. Rodelio Punzalan. The new counsel's appearance was without objection on the part of appellees' counsel as noted in the May 29, 2009 Order.<sup>[5]</sup>

The court a quo set the case for hearing on March 27, 2009<sup>[6]</sup>, May 29, 2009<sup>[7]</sup>, July 31, 2009<sup>[8]</sup>, September 17, 2009<sup>[9]</sup>, March 5, 2010<sup>[10]</sup>, May 27, 2010<sup>[11]</sup>, July 29, 2010<sup>[12]</sup>, September 24, 2010<sup>[13]</sup>, November 11, 2010<sup>[14]</sup> and December 10, 2010. These hearings were all attended by Atty. Cruz. However, the court a quo,

despite the withdrawal of Atty. Punzalan as counsel for appellants, still sent court orders to him setting the case for hearing on July 29, 2010 and November 11, 2010.

Since Atty. Punzalan had been receiving orders from the court a *quo*, he filed a *Manifestation and Motion Ex-Parte*<sup>[15]</sup> stating that "he had already withdrawn long ago his appearance as counsel for defendants. If he remembers it correctly, he had submitted a formal withdrawal of appearance, which can be confirmed from the records of the case."

The hearing on November 11, 2010 was attended by Atty. Cruz but this was re-set and the court a *quo* ordered that for the last time, the hearing would be on December 10, 2010.<sup>[16]</sup> On said date, appellee Edelyn San Miguel testified as a continuation of her direct examination.

Edelyn San Miguel was cross-examined in the February 4, 2011 hearing by the counsel of Daewoo,<sup>[17]</sup> but Atty. Cruz was absent. Hearing dates were scheduled on March 25 and April 14, 2011. In the hearing on March 25, 2011, a person<sup>[18]</sup> appeared in behalf of Atty. Cruz to inform the court that said counsel has conflict of schedule. The court a *quo* reset for the last time the continuation of hearing to April 14, 2011 as previously scheduled, but Atty. Cruz again failed to appear.

Hearings were scheduled on June 3, June 16, October 6, November 24, 2011, March 2, 2012 and April 26, 2012.<sup>[19]</sup> However, Atty. Cruz did not anymore attend said hearings. In the June 7, 2012<sup>[20]</sup> Order, the court a *quo* declared appellants in default.

Acting on the joint motion of appellees and Daewoo, the court a quo issued an Order dated June 22, 2012, dismissing with prejudice the complaint against Daewoo considering that they have come to an amicable settlement.

On December 21, 2012, the court a *quo* rendered its decision, the dispositive portion of which reads:

Accordingly, judgment is hereby rendered in favour of the plaintiffs and against the defendants Rosalinda Valisno Cando, Gasat Express, Inc., and Bunji Miyashiro, and ordering them, to pay jointly and severally the plaintiffs, to wit:

1. Actual damages in the amount of Php150,000.00;
2. Compensatory damages in the amount of Php 1,000,000.00;
3. Moral damages in the amount of Php 1,000,000.00;
4. Exemplary damages in the amount of Php 200,000.00;
5. Attorney's fees in the amount of Php 50,000.00 plus Php 3,000.00 for every court hearing; and

Cost of suit.<sup>[21]</sup>

Appellants filed a Motion for New Trial and/or Reconsideration<sup>[22]</sup> but was denied in the order dated March 25, 2013.<sup>[23]</sup>

Hence, this appeal.