

TWENTIETH DIVISION

[CA-G.R. CV. NO. 04330, March 25, 2014]

**PEOPLE'S TRANS-EAST ASIA INSURANCE CORP. AND SPS.
ANTONIO YNOC & GLORIA YNOC^[1], PLAINTIFFS-APPELLEES, vs.
WILLIAM TIU AND RANDY L. DIMAPE^[2], DEFENDANTS-
APPELLANTS.**

D E C I S I O N

INGLES, G. T., J.:

This is an appeal from the August 31, 2011 Decision^[3] rendered by Branch 20 of the Regional Trial Court in Cebu City in Civil Case No. CEB-20610 (Damages and Attorney's Fees) the *fallo* of which reads:

"WHEREFORE, upon the foregoing considerations, Judgment is hereby rendered –

Sentencing the defendants solidarily to pay plaintiff People's Trans-East Asia Insurance Corporation the sum of Php153,335.59 as reimbursement for the insurance indemnity paid by the latter for the repair of Inoc's Mitsubishi car; and

Sentencing the defendants solidarily to pay the sum of Php46,000.00, which is the amount equivalent to 30% of Php153,335.59, as attorney's fees, and the costs in this litigation.

The counterclaim is hereby dismissed.

SO ORDERED."

The Antecedent Facts

In a Complaint^[4] for damages and attorney's fees filed before the Regional Trial Court of Cebu City, Branch 20 on July 24, 1997, the plaintiffs-appellees alleged, *inter alia*, that:

1. The Spouses Ynoc owned a brand new Mitsubishi Pajero Turbo Wagon with Plate No. GNN-747, with Certificate of Registration No. 36511631 and covered with an own damage insurance in the amount of Php1,000,000.00 issued by co-plaintiff People's Trans-East Asia Insurance Corp., Cebu Branch Office, for the period October 2, 1996 to October 2, 1997;
2. The defendant William Tiu is a public utility bus operator under the name and style "D Rough Riders" plying the route from Cebu City to Bogu, Cebu and other northern towns, and vice versa, one of which is a truck bearing Plate No.

GVB-205;

3. On November 2, 1996, at about 9:00 a.m., plaintiff Antonio Ynoc was carefully driving his Mitsubishi Pajero Turbo Wagon from Cebu City going to Bogo Cebu. While he was negotiating the one lane uphill road to Sitio Base Brgy., Dumlog, Sogod, Cebu and was almost through, a D Rough Riders bus bearing Plate No. GVB-205 owned by defendant William Tiu and driven by Randy L. Dimape, authorized driver, running from opposite direction, bumped head on plaintiff's car;
4. Immediately before the incident, plaintiff Ynoc noticed that the oncoming passenger bus of defendant was overloaded with passengers some of whom were on top. The bus insisted to run downhill forcing plaintiff Ynoc to immediately step on the brakes for there was no other safe way – if he swerved to the left he will fall to the cliff/ ravine, and if he swerved to the right, he would slam on the mountainside;
5. At the time of road accident, the registration certificate of passenger bus bearing Plate No. GVB-205 owned by defendant Tiu and driven by defendant Dimape had expired on May 4, 1996;
6. The car of plaintiffs sustained damages as a result of the impact, the repair of which was estimated by Cebu Asian Motors Corp. to cost Php180,169.31;
7. Oral and written demands were made upon defendants but they failed and refused to indemnify the plaintiffs-spouses Ynoc compelling the latter to claim indemnity from their own damage insurer, the co-plaintiff People's Trans-East Asia Insurance Corp. The latter paid the amount of Php 153,335.59 for the repair of the damaged Mitsubishi Pajero, while the Spouses Ynoc shared the amount of Php9,409.47. People's Trans-East Asia Insurance Corp. was partly subrogated to the rights of plaintiffs;
8. The spouses Ynoc were deprived of the use of their vehicle for thirty (30) days and had to hire the services of taxicab at an average daily expense of Php500.00 in taking their children to and from their school and in going to their place of work;
9. The spouses Ynoc prayed for moral damages in the amount of Php50,000.00; exemplary damages in the amount of Php50,000.00; contingent fee of thirty (30%) percent of whatever amount of damages that plaintiffs may be awarded; and litigation expenses in the amount of Php20,000.00. The plaintiffs-spouses Ynoc also prayed for actual damages in the amount of Php9,409.47 which was their share in the cost of repair, while the plaintiff People's Trans-East Asia Insurance Corp. also prayed for actual damages in the amount of Php153,335.47.

On September 15, 1997, the defendants-appellants filed their Answer^[5] and denied the material allegations in the complaint, to wit:

1. That it was not defendant Demape who was at fault and recklessly driving, but plaintiff Antonio Ynoc;

2. That at the time of the incident, the bus driven by defendant Demape was not overloaded and had an updated registration;
3. That defendant William Tiu had religiously and diligently exercised his responsibilities in the selection and supervision of his drivers including defendant Demape;
4. That at the time of the incident, the single-lane road was at the right lane of the bus. When the bus entered the single-lane road, it was free from any oncoming vehicle. It was only when the bus was halfway through the single-lane road that the vehicle driven by the plaintiff Ynoc entered the other end of the single-lane road despite being fully aware of the oncoming bus;
5. That as the defendant Demape repeatedly sounded the bus's horn and blinked its headlights to warn the plaintiff Ynoc's oncoming vehicle since the bus had the right of way at that point in time;
6. That instead of giving way to the oncoming bus, the plaintiff Ynoc insisted on entering the single-lane road and continued to move forward even if the defendant's bus was already halfway through;
7. That sensing a collision, defendant Demape fully applied the brake of the bus as there was no more space on the road to either turn left or right;
8. That despite applying the bus's brake, the bus and the plaintiff Ynoc's vehicle still collided and that on account of the impact, the defendant's bus was badly damaged;
9. That whatever damages the plaintiffs suffered was due to the plaintiff Ynoc's recklessness;
10. As counterclaim, the defendants prayed that the plaintiffs be made to jointly and severally pay Php72,000.00 as total actual and compensatory damages; Php50,000.00 as Attorney's fees; Php100,000.00 as Exemplary Damages and Php30,000.00 as litigation expenses.

The trial court conducted pre-trial and limited the issues^[6] to the following:

1. Whether or not plaintiffs are entitled to the damages prayed for in the complaint;
2. Whether or not defendants are entitled to their counterclaims;
3. Whether or not defendant driver was negligent in the operation of said passenger bus;
4. Whether or not plaintiff's Mitsubishi Pajero motor vehicle was at stop position when it was hit and bumped by the passenger bus owned by defendant William Tiu;

Trial on the merits ensued.

The plaintiffs-appellees presented the testimonies of witnesses Antonio Ynoc, PO3 Crescente B. Armamento and Ramon E. Aguilar and offered the following documentary exhibits:

Exhibits:

- "A" - Policy No. PC-07024^[7];
- "B" - Release of Claim;^[8]
- "C" "D" "E" - pictures of plaintiff's damaged vehicle;^[9]
- "F" to "F-8" - Sketch depicting the scene of the vehicular accident;^[10]
- "G" - machine copy of police report;^[11]
- "H" - Letter of Authority;^[12]
- "I" - Demand Letter;^[13]
- "J" to "J-4" - Official Receipts of filing fee^[14].

On the other hand, defendants-appellants presented the testimonies of witnesses Nestor Erejer, Roberto Lipardo, and William Tiu and offered the following documentary exhibits:

Exhibits:

- "2" - Release of Claim^[15];
- "3" - Sketch^[16];
- "4" - Official Receipt LTO;^[17]
- "5" - Certificate of Registration;^[18]
- "6" - Rough Riders rules and regulations;^[19]
- "7" - Voucher;^[20]
- "8" - SEC Certification^[21].

Then on August 31, 2011, the trial court rendered its Decision and made the following findings in its *ratio decidendi*:

"From the foregoing facts, it is clear and hardly disputable that Dimape was negligent in the way he drove the passenger bus and the serious damage caused to Inoc's car is attributable solely to his fault and reckless imprudence. Had he driven his car carefully and slowly, knowing as he did that he was negotiating a blind curve and mindful that another vehicle could be coming from the opposite side, as did happen, he could have timely applied his brakes upon seeing Inoc's car and avoided the accident. The court cannot give credence to the version of the defendants as it is not supported by the evidence. The sketch and the police report show that contrary to the claims of the defendants, the accident happened as Inoc was approaching the curve at the upper end of the road going to Bogo, Cebu and the truck had just entered it shortly after negotiating the curve. It was going downhill. The car was not traveling fast as it was traveling uphill. Besides, Inoc's family was with him, he had

to drive carefully.

'Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a *quasi-delict* x x x.' (Article 2176, New Civil Code) Such finding of negligence gives rise to the presumption of negligence on the part of his employer who has the burden of proving that it exercised due diligence in the selection and supervision of his employees (*Pantranco North Express, Inc. vs. Baesa, G.R. No. 79050-51, November 14, 1989*). Article 2180 of the New Civil Code. Provides that '(e)mmployers 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.'

Admittedly, at the time of the accident, defendant Dimape was employed as driver of defendant William Tiu. William Tiu, therefore, as employer, is presumed to have been negligent in the selection and supervision of Dimape. It was his burden to overcome this presumption by competent proof of due diligence. According to his testimony, the usual routine he does when one applies as driver in his company is to conduct an interview on the applicant. Afterwards, the applicant is informed of the company rules and regulations and subjected to actual driving test and written examination. If he passes the tests, he undergoes training and then accepted for probationary employment for six (6) months before being admitted as regular driver. Tiu's testimony however was not corroborated or supported by other oral or documentary evidence. Obviously, such bare testimony is weak and insufficient to overcome the presumption of negligence on his part. As employer, Tiu's liability is direct and immediate; it is not conditioned upon prior recourse against the defendant employee (Dimape) and a prior showing of the insolvency of the latter (*Kapalaran Bus Lines Coronado [sic], 176 SCRA 792*). His liability is primary and solidary with that of his driver-employee Dimape (*Rafael Reyes Trucking, Corp. vs. People of the Philippines, G.R. No. 129029, 3 April 2000*).

The evidence has likewise established that plaintiff People's Trans-East Asia Insurance has paid indemnity as insurer for the repair of Inoc's Mitsubishi car in the amount of Php153,335.59, as shown in the release of claim. By the principle of subrogation, provided for in Article 2207 of the New Civil Code, People's Trans-East Asia is entitled to collect the said amount from the defendants as part of the latter's liability or obligation to the plaintiff-Inoc Spouses for the wrongdoing and damages they have caused to the latter.

'ART. 2207. If the plaintiff's property has been insured and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from