

SPECIAL TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 80109-MIN, June 27, 2014]

**ROGELIO SIPALAY AND FLORIDA MAZO, PLAINTIFFS-
APPELLANTS, VS. YELLOW BUS LINE CO., INC, AND ELISIO P.
GILLO-ANO, DEFENDANTS-APPELLEES.**

D E C I S I O N

INTING, J.:

This is an appeal from the March 13, 2003 Decision^[1] of the Regional Trial Court, Branch 13, Davao City in Civil Case No. 21,997-93 for damages, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of defendants and against plaintiffs. The complaint of plaintiffs is hereby dismissed for lack of merit.

Plaintiffs for their part are directed to pay defendant Yellow Bus Line the amount of P30,000.00, representing Attorney's fees.

The other claims of defendants for damages which are not supported by receipts or other documentary evidence are denied.

SO ORDERED."

The facts of the case are as follows:

On January 5, 1993 at about 5:25 in the afternoon, herein plaintiff Florida Mazo was on her way to collect dues on board their company vehicle, a Fiera Fuso bearing Plate No. LAS 115 (Fiera). With her was their driver Teodoro Lansangan. They were plying Quimpo Avenue approaching the junction of Sandawa Road in Davao City.^[2] Before reaching the junction, Florida saw a yellow bus bearing Plate No. LVK 225 (Bus) about three (3) meters away. The Bus was plying Sandawa Road from the left, and also approaching the crossing. The Bus was running fast while traversing the intersection, thus causing its rear right side to hit the Fiera which was on halt at that time. Because of the strong impact, Teodoro was thrown out of the Fiera and into the road pavement; while Florida was pushed towards the dashboard. The Fiera was stuck to the rear right side of the bus, dragged until it was freed, and thrown to the left shoulder of the Sandawa Road.

The Bus driver left the scene leaving Teodoro and Florida injured, and the Fiera damaged on its left front side. The Fiera's owner, herein co-plaintiff Rogelio Sipalay, wrote the Bus operator to settle the expenses for the damages and injuries brought

about by the accident caused by the Bus, but to no avail. Hence, Rogelio and Florida filed a complaint for damages before the RTC on April 19, 1993.^[3]

In their Answer,^[4] the defendants aver that it was the Fiera that bumped their Bus. Elisio Gillo-ano, the bus driver, with his conductor, was plying Sandawa Road from the Eco Terminal where he dropped off the passengers from General Santos. From the terminal, Eliseo and the conductor were to proceed to their garage in Ma-a via the Sandawa Road. They were then following a Volkswagen which stopped in the intersection of Sandawa Road and Quimpo Boulevard. While the Bus was on stop, Elisio saw the Fiera plying Quimpo Boulevard on the right about 30 meters away from the intersection. When the Volkswagen started to cross the intersection, Eliseo drove the Bus forward. But just as the rear side of the Bus was about to finish crossing, the Fiera suddenly rammed the right side of the Bus, about 3 meters from its rear end. As the impact was very strong, the Fiera's fender stuck to the Bus. Elisio looked through the window and saw a man seated on the road pavement. Elisio went down from the bus to help, but before he could do so, he saw someone in the act of throwing a stone at him. This prompted Elisio to go back to the bus and drive to the police station about 300 meters away from the site.

During the trial, Florida and Teodoro testified to corroborate the allegations against the Yellow Bus Co. They maintained that it was the Bus that bumped the Fiera, which at that moment was already on stop at the intersection due to the traffic and the slow moving vehicles traversing the Sandawa Road.^[5] Rogelio was presented to prove the expenses he incurred for the repairs of the Fiera which amounted to P22,380.^[6]

For the defense, Eleuterio Geraldizo, Jr., the conductor, the driver Eliseo and several Yellow Bus employees who investigated the incident were presented. Eleuterio and Eliseo insist that from the terminal, they were following a Volkswagen beetle which was running about 40 km./hr. due to heavy traffic.^[7] The Volkswagen stopped at the intersection of Sandawa Road and Quimpo Blvd. The Bus also stopped. As the Volkswagen started to cross the intersection, the Bus followed. Suddenly Eliseo and Eleuterio, Jr. heard a loud explosion from the right rear side of the Bus.^[8] When they looked through the bus window, they saw a Fiera spinning towards the left side of the Bus^[9] going towards a gutter on the other side of the Sandawa Road.^[10] They also saw a man sitting on the pavement.^[11] Thinking of helping the injured man, Eliseo stopped the Bus and alighted. However, as he was about to approach the injured man, he saw another person in the act of throwing a stone at him. This impelled him to get on the Bus again and drive away to the police station about 300 m. away from the scene.^[12] The dent on the right side of the Bus was located 3 meters from its rear end. The Fiera's fender/ grill was attached to the Bus.^[13]

The RTC rendered the assailed decision finding that it was the Fiera that came into contact with the Bus hitting the latter's rear portion; that the Fiera was not at a stop position during the collision as alleged by the plaintiffs since the Fiera was able to travel towards the left or the other side of the Sandawa Road hitting a traffic sign before it went to a halt; and that if the Bus indeed sideswiped the Fiera, the impact would have been on the front of the Bus or at the very least, at the middle, but not at the rear end. Accordingly, the RTC dismissed the plaintiffs' complaint and ordered them to pay the defendants' attorney's fees.

Hence, this appeal by the plaintiffs with the following errors to wit:

I.

THE COURT A QUO SERIOUSLY ERRED IN DECLARING THAT IT WAS THE FORD FIERA OF THE PLAINTIFFS-APPELLANTS WHICH BUMPED THE YELLOW BUS OF THE DEFENDANT;

II.

THE COURT A QUO SERIOUSLY ERRED IN ORDERING THE PLAINTIFFS-APPELLANTS TO PAY DEFENDANTS-APPELLEES ATTORNEY'S FEE OF P30,000.00;

III.

THE COURT A QUO SERIOUSLY ERRED IN FAILING TO AWARD THE CLAIMS OF THE PLAINTIFFS-APPELLANTS.

The plaintiffs-appellants maintain that the Fiera was at a stop position when it was hit by the Bus, but the latter dragged the Fiera towards the other side of the Sandawa Road thus, hitting the road sign located on the left side of the aforementioned road; that the front part of the Bus could not have hit the Fiera because the former was running at a fast speed causing it to sway its rear end to its right thereby hitting the left front side of the Fiera upon crossing the intersection; and that if the Fiera bumped the Bus, the Fiera should have bounced back to the direction from where it came as a result of the impact and not towards the other side of the Sandawa Road.

Our Ruling.

The appeal is partly with merit.

First and third errors, being interrelated will be discussed jointly.

No pictures were taken at the scene of the accident nor were there photos of the vehicles' positions during that fateful incident. Nevertheless, photos of the damages sustained by the respective vehicles were proffered. Based on those pictures, coupled with the sketches and the testimonies of the witnesses, this Court is convinced that it was the Fiera and not the Bus which caused the mishap of the two vehicles as aptly found by the RTC.

From the records, it was well-established that both vehicles were on motion during the impact. The Bus was plying the Sandawa Road approaching the crossing of Quimpo Boulevard. In the meantime, the Fiera was navigating Quimpo Boulevard coming from the right if facing the direction where the Bus was going. The Fiera was also about to cross the intersection. Based on where the impact was on the Bus, it is clear that the Bus was able to cross the junction first considering that the bus was hit on its right rear side. This shows that the Fiera was moving speedily because it