

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CV. NO. 01439, September 22, 2014 ]**

**SALVADOR BORGUETA, JOSEFINA BORGUETA & JOANNE FIDES  
OMEGA, PLAINTIFFS-APPELLEES, VS. CARLITO G. MACAUBOS ,  
DEFENDANT,**

**PAWING MILLING CORP. REPRESENTED BY ITS PRESIDENT AND  
GENERAL MANAGER, DEFENDANT-APPELLANT.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

This is an appeal from the Decision<sup>[1]</sup> dated November 22, 2005 rendered by the Regional Trial Court of Tacloban City, Branch 8 in Civil Case No. 7438.

#### **Factual and Procedural Antecedents**

From the records, the facts of this case are as follows:

At around 5:45 o'clock in the afternoon of February 6, 1987, defendant Carlito G. Macaubos, driver of defendant Pawing Milling Corporation was driving an Isuzu cargo truck bearing Plate No. HAA-327 and the same was traveling along Senator Enage Street coming from the direction of Justice Romualdez Street heading North or towards the direction of the Leyte Provincial Capitol Bldg. Upon reaching a portion of the road fronting the Oceanic Bldg., said truck hit two pedestrians who were walking at the side of the road fronting the Oceanic Bldg. The driver, defendant Macaubos, instead of stopping to help the victims, sped away and proceeded to T. Claudio Street. Said vehicle upon reaching the corner of T. Claudio and M.H. Del Pilar Streets, also hit a motorcab for hire traveling along M.H. Del Pilar Street on a South to North direction. The driver and passengers of said motorcab were injured and the motorcab, to quote the Police Investigator's Report, was "totally damaged" and defendant Macaubos, just like in the previous incident, also sped away. Said driver-defendant was later apprehended by the police around 8:30 in the evening of even date at the *bodega* of Ching Hong Commercial and was brought to the Police Headquarters for investigation.

Summons were served upon the defendants on August 17, 1987 but defendant Carlito Gemanes Macaubos could not be located so service of summons by publication was resorted to. Defendant Macaubos did not file any Answer, consequently, on Motion of the plaintiffs, defendant Macaubos was declared in default by the trial court on March 17, 1988.

The trial court conducted hearings on the application for Preliminary Attachment and thereafter, defendant-appellant Pawing Milling Corporation, filed its Answer on

August 31, 1987. On June 17, 1988, plaintiffs-appellees filed a Motion for Admission of Amended Complaint with the Amended Complaint attached. Defendant Pawing Milling Corporation filed an Opposition on July 28, 1988. The Amended Complaint was admitted on October 13, 1988. Defendant-appellant adopted their Answer to the original complaint as their Answer to the Amended Complaint. The trial court conducted pre-trial.

Trial on the merits ensued.

### ***Evidence for the plaintiffs-appellees***

Plaintiff-appellee Joanne Fides V. Omega testified that when the incident occurred, she was a student at the U.P. College of Tacloban. As it was a first Friday, Omega and her friend, the deceased Maria Josefina (Joy) Borgueta decided to take a walk from U.P. Tacloban to the Sto. Nino church passing through Sen. Enage Street and Justice Romualdez Street. On or about 5:30 PM, plaintiff-appellee Omega and her companion were suddenly hit and bumped by a truck. The incident happened at the edge of the sidewalk between Footstep and Oceanic Building where the sidewalk is not paved and filled with trash. Omega further testified that shortly before they were hit, Joy was at the edge of the uncemented sidewalk while the witness was at the middle of the shoulder of the road when they were simultaneously hit by the same truck.

Witness Omega was rendered unconscious and that she regained consciousness two days later at the DZR Hospital, now the EVRMC, after undergoing surgery. When Omega woke up, she could not move because of her multiple injuries. The Medico-Legal Report containing the injuries sustained by witness Omega was marked as Exhibit "B"<sup>[2]</sup>. Witness Omega was hospitalized for three weeks. After her confinement at the DZR Memorial Hospital, Omega was brought to the Foundational Center for further therapy as she was bedridden and unable to move. Omega was then confined at the Center for one (1) month and was discharged only on April 8, 1987. Omega was brought home but continued her medication until she was able to stand on her own. Omega's medical expenses amounted to more or less P50,000.00 as shown in the summary of expenses<sup>[3]</sup> and receipts<sup>[4]</sup> presented in court. Omega testified that because of the accident, she suffered from mental anguish, sleepless nights, excruciating pain, physical fear and phobia, which, if quantified, will be equivalent to P400,000.00. Omega likewise testified that she had to discontinue her studies at U.P. although she was already graduating from her course of BSBA Major in Accounting. Also, at the time of the incident, witness Omega testified that she was scheduled to leave for the United States on April 17, 1987 and because she was confined in the hospital, she could not make it to her interview at the US Embassy on February 8, 1987 and thus, lost her opportunity to migrate to the United States for work , which lost opportunity is valued at P100,000.00. And because of the accident, witness Omega's family was constrained to engage the services of counsel and spent P50,000.00 as well as incurred litigation expenses in the amount of P50,000.00.

Plaintiff-appellee Salvador Borgueta took the witness stand and testified that the deceased victim, Josefina "Joy" Borgueta, was his daughter. Joy, at the time she died, was twenty-one years old<sup>[5]</sup>. Joy, according to her father, was a be medaled student and an over-achiever who graduated as one of the outstanding students of

her elementary class in Palo Elementary School and a salutatorian when she graduated from St. Mary's High School<sup>[6]</sup>. The deceased graduated from the U.P. College of Tacloban with a Bachelor of Arts in Social Sciences Major in Psychology and thereafter, pursued a course in Masters of Public Management in the same university<sup>[7]</sup>. The witness Borgueta testified that at the time of the victim's demise she had already applied with GSIS and received a telegram notifying Villegas of a job interview. Borgueta had likewise pursued possible employment with Maritime Polytechnic<sup>[8]</sup> and Central Bank Regional Office<sup>[9]</sup>. At the time of her death, Joy was employed at the Philippine Information Agency as a writer in the Office of Media Affairs Regional Office No. 8<sup>[10]</sup> with a remuneration of P600.00 a month. Witness Borgueta testified that his deceased daughter was not sickly and had no vice and could have lived for another forty years and her income could have been P1,000.00 a month. As a consequence of their daughter's demise, witness Borgueta testified that they endured mental suffering in the amount of P500,000.00. As a consequence of the incident, Borgueta testified that they engaged the services of counsel and spent P50,000.00 and incurred litigation expenses in the amount of P50,000.00. Borgueta also testified that the Isuzu cargo truck that hit his daughter, bearing Plate No. HAA-327, is owned and operated by defendant-appellant Pawing Milling Corporation. The driver was defendant Carlito Gemanes Macaubos. Salvador Borgueta's testimony was corroborated by the testimony of his wife, the plaintiff-appellee Josefina Borgueta who also took the witness stand.

The third witness for the plaintiffs, Bernardino Leporada, testified that at around 5:45 in the afternoon of February 6, 1987, he was walking along Sen. Enage Street towards the direction of Justice Romualdez Street. When he was near Oceanic Bldg., witness Leporada saw an Isuzu cargo truck bearing Plate No. HAA 327 turning towards Sen. Enage Street from Justice Romualdez Street and it was running very fast. Witness Leporada testified that he was almost hit by the said truck but evaded it just in time but two other ladies were hit. He shouted at the truck driver to stop but the truck continued on its way and turned right to T. Claudio Street. Witness Leporada further testified that she saw that the two ladies that were hit by the truck were lying prostrate on the street and that one was dead while the other one was still alive. Witness Leporada hailed a tricycle and brought the lady who was still alive to the hospital. He later learned that the name of the lady who died was Maria Josefina "Joy" Borgueta while the lady that he brought to the hospital was Joanne Omega.

Dr. Angel Cordero took the witness stand and testified that he conducted an autopsy on the victim, Maria Josefina "Joy" Borgueta and issued a Medico-Legal Necropsy Report<sup>[11]</sup>. Dr. Cordero testified that the injuries of the deceased Borgueta were caused or resulted from a vehicular accident and the fatal injuries were those involving the victim's brain, to wit: (1) Fracture, complete, whole cranial vault with partial avulsion of the bone at the forehead; (2) Partial avulsion of the frontal portion of the brain substance. The cause of death of the victim is cardio respiratory arrest due to shock due to subarachnoid, subdural, epidural hemorrhage, multiple fracture involving the whole cranial vault and the right upper extremity as a result of vehicular accident. Dr. Cordero likewise testified that the driver of the Isuzu cargo truck, Carlito Gemanes Macaubos, was subjected to a laboratory examination and the specimen, consisting of one vial of the blood taken from Macaubos had 0.15% alcohol content and was presumably under the influence of liquor and with that level of alcohol in the blood, the person will be sluggish in his

reflexes<sup>[12]</sup>.

Witness Sofronio Hacbang testified that at the time of the incident, he was the Supervising Transportation Regulation Officer of the Land Transportation Office, Tacloban District Office. Witness Hacbang testified that the defendant-appellant, Pawing Milling Corporation, is the owner of one Isuzu cargo truck with Engine No. DH-100-4247N, with Chassis No. ED70-170485 with Plate No. HAA-329.

The last witness for the plaintiffs was SPO4 Emiliano Montiel who testified that the incident of February 6, 1987 was recorded in the blotter of the Tacloban City Police Station and entered as Entry No. 3862<sup>[13]</sup>.

### ***Evidence for the defendant-appellant***

The defendant-appellant presented Rogelio Adelantado who testified that in the afternoon of February 6, 1987, at around 5:45, he was about to cross the street from Lee's Grocery to Orient Pearl when he saw a sideswiping incident wherein two girls were side swept by a truck. Witness Adelantado also testified that right before the incident, he saw the two girls laughing and making jokes as they were walking along Enage Street itself and not on the sidewalk designated for pedestrians. Adelantado testified that after the two girls were hit by the truck, the latter moved slowly on its way while witness Adelantado helped carry the girls to the tricycle which headed towards the hospital. The testimony of Adelantado was echoed by witness Cornelio Chan.

Witness Bernardo Cabigon testified that at the time of the incident, he was a manager at Pawing Milling Corporation which is engaged in the business of milling and selling rice. Witness Cabigon testified that he knows the defendant Macaubos as he was the one who interviewed Macaubos when the latter applied as driver. Cabigon testified that as part of the screening process, the defendant-appellant conducts background checks on their applicants. Witness Cabigon said that he called up government agencies to find out if Macaubos had any derogatory record. Finding none, Macaubos was hired three days after. Cabigon further testified that since the defendant corporation has other sister companies employing, more or less, thirty (30) drivers, they hold seminars and lectures on safety and maintenance of the trucks every two months. Cabigon testified that the defendant corporation extended financial assistance to the Borqueta's in the amount of P9,000.00 and P5,776.00 to the Omega's.

The last witness for the defendant-appellant was Dominador Budano who testified that before the cargo of the truck driven by Macaubos was unloaded on that fateful day of February 6, 1987, said driver was in the warehouse of Chin Hong Commercial where witness Budano was a warehouseman. Budano testified that at around 3:00 o'clock in the afternoon on even date the truck could not be unloaded right away as there were other trucks that arrived ahead with cargoes that also needed to be unloaded. Thus, the driver, Macaubos had to wait a while and had snacks with the witness Budano until at around 5:00 in the afternoon when the unloading was finally finished and Macaubos went on his way.

### **Ruling of the RTC**

The trial court ruled in favor of the plaintiffs-appellees finding all the elements of *quasi delict* under Art. 2176 of the Civil Code extant in this case.

The trial court further ruled that defendant-appellant Pawing Milling Corporation is liable for the act or omission of its driver, defendant Carlito/ Florentino Gemanes Macaubos, pursuant to Art. 2180 of the Civil Code which imposes solidary liability upon an employer for the damages caused by their employees.

Hence, on November 22, 2005 or after over eighteen (18) years, the trial court rendered judgment, the dispositive portion of which, states:

"WHEREFORE, premises considered, this Court finds for the plaintiffs and against the defendants. The defendants are therefore hereby ordered to pay jointly and severally the plaintiff Borgueta the sum of P500,000.00 as the estimated unearned income of the victim Maria Josefina "Joy" Borgueta and to set an example for public good, they are hereby directed to likewise pay the sum of P500,000.00 as moral damages; P100,00.00 as exemplary damages; P50,000.00 in civil indemnity; P50,000.00 actual expenses incurred during the wake of the victim less the P9,000.00 that defendant Pawing Milling Corporation had given and P50,000.00 as attorney's fees; and to pay the sum of P50,000.00 for the medical expenses of Joanne Fides Omega; P100,000.00 as moral damages and P50,000.00 in exemplary damages.

SO ORDERED."

Aggrieved by the trial court's ruling, the defendant-appellant corporation timely filed a Notice of Appeal<sup>[14]</sup>, which was given due course by the trial court in its Order January 10, 2006<sup>[15]</sup>. On the other hand, the defendant Carlito Macaubos did not file a Notice of Appeal. Hence, in so far as he is concerned, the trial court's Decision against him has already become final and executory.

The records of this case was received by this Court on May 19, 2006. However, the transcripts of stenographic notes transmitted by the trial court were incomplete<sup>[16]</sup>. From the years 2006 to 2011, this case languished in the completion stage after the stenographers of the missing transcripts could no longer be located or have already died.

The records having been completed, this Court on September 16, 2011, issued a Notice to File Brief<sup>[17]</sup>. Defendant-appellant filed its Brief on March 19, 2012<sup>[18]</sup>, while plaintiffs-appellees filed their brief on July 10, 2012<sup>[19]</sup>. This case was declared submitted for decision in a Resolution dated November 29, 2013<sup>[20]</sup>.

On August 22, 2014, the counsel for plaintiffs-appellees filed a Notice of Change of Address requesting this Court to, henceforth, furnish the plaintiffs-appellees copies