



REPUBLIC OF THE PHILIPPINES

Supreme Court

Manila

FIRST DIVISION

G.R. No. 160709 **February 23, 2005****NELEN LAMBERT, assisted by her husband, GLENROY ALOYSUIS LAMBERT, petitioners,**
vs.**HEIRS OF RAY CASTILLON, Represented by MARILOU T. CASTILLON and SERGIO LABANG, respondents.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision¹ of the Court of Appeals dated October 21, 2002 in CA-G.R. CV No. 43734, which affirmed the June 29, 1993 decision of the Regional Trial Court of Iligan City, Branch 06, in Civil Case No. 06-2086.

In the evening of January 13, 1991, Ray Castillon visited the house of his brother Joel Castillon at Tambo, Iligan City and borrowed his motorcycle. He then invited his friend, Sergio Labang, to roam around Iligan City. Ray drove the motorcycle with Sergio as the backrider.²

At around past 10:00 p.m., after eating supper at Hona's Restaurant and imbibing a bottle of beer, they traversed the highway towards Tambo at a high speed. Upon reaching Brgy. Sto. Rosario, they figured in an accident with a Tamaraw jeepney, owned by petitioner Nelen Lambert and driven by Reynaldo Gamot, which was traveling on the same direction but made a sudden left turn. The incident resulted in the instantaneous death of Ray and injuries to Sergio.³

Respondents, the heirs of Ray Castillon, thus filed an action for damages with prayer for preliminary attachment against the petitioner Nelen Lambert. The complaint was docketed as Civil Case No. 06-2086 of the RTC of Iligan City, Branch 06.⁴ The complaint was subsequently amended to include the claim by Joel Castillon for the damages caused to the motorcycle.⁵

On June 29, 1993, after a full-blown trial, the court *a quo* rendered a decision in favor of herein private respondents but reduced petitioner's liability by 20% in view of the contributory negligence of Ray. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, directing the latter, jointly and severally, to pay the former the following:

1. The sum of SIX HUNDRED THIRTY-THREE THOUSAND AND NINETY-ONE (P633,091) PESOS, representing loss of support, death indemnity, funeral and related expenses, moral damages and attorney's fees and
2. Costs of the suit.

For lack of merit, defendants' counterclaim is dismissed.

On the claim of Joel Castillon, the evidence shows that he is not the real owner of the motorcycle. He is not the real party in interest. Accordingly, his complaint is dismissed.

On the third-party complaint, the third-party defendant Zenith Insurance Corporation is ordered to pay the sum of P16,500.00 directly to the plaintiffs. This sum, if paid, should be deducted from the amount adjudged in par. 1 above.

SO ORDERED.⁶

The Court of Appeals affirmed the decision of the trial court.⁷ Hence the present petition, based on the following arguments:

1. The Honorable Court of Appeals committed serious error of law and grave abuse of discretion when it did not apply the ruling of this Honorable Court in the case of *Philippine Rabbit Bus Lines vs. The Honorable Intermediate Appellate Court and Casiano Pascua, Et. Al.*, [189 SCRA 168, August 30, 1990], as reiterated recently in the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999], in which this Honorable Court enunciated that drivers of vehicles "who bump the rear of another vehicle" are presumed to be the cause of the accident.

2. The erroneous conclusion of the Honorable Trial Court as affirmed by the Honorable Court of Appeals that the act of tailgating, at high speed, constitutes contributory negligence only, is contrary to the rulings of this Honorable Court in the case of *Sanitary Steam Laundry, INC. vs. The Honorable Court of Appeals* [300 SCRA 20, December 10, 1998] and the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999].

3. The Honorable Court of Appeals grossly erred in its conclusion that petitioner's driver was negligent, without taking into consideration the presumptions enunciated by this Honorable Court in the case of *Philippine Rabbit Bus Lines vs. The Honorable Intermediate Appellate Court and Casiano Pascua, Et. Al.*, [189 SCRA 168, August 30, 1990], and the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999].

4. As an alternative relief, petitioner most respectfully assigns as error the Honorable Trial Court's computation as to the loss of earning capacity of Ray Castillon. Such computation is contrary to the formula enunciated by this Honorable Court in the case of *Villa Rey Transit, Inc. vs. The Honorable Court of Appeals* [31 SCRA 511 (1970)].

5. The Honorable Trial Court's award of moral damages is contrary to the pronouncement of this Honorable Court in the case of *Ace Haulers Corporation vs. The Honorable Court of Appeals and Abiva* [338 SCRA 572, August 23, 2000], wherein the award of moral damages was disallowed absent any evidence of bad faith or ill-motive.⁸

Petitioner insists that the negligence of Ray Castillon was the proximate cause of his unfortunate death and therefore she is not liable for damages.

In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be put into issue. Questions of fact cannot be entertained. The finding of negligence by the Court of Appeals is a question of fact which we cannot pass upon as it would entail going into factual matters on which the finding of negligence was based. As a rule, factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.⁹

Our examination of the records shows that both the trial court and the Court of Appeals carefully considered the factual backdrop of the case. No cogent reason exists for disturbing the following findings of the trial court, which the Court of Appeals affirmed:

... To the mind of the court, this is exactly what happened. When Reynaldo Gamot was approaching the side road, he slightly veered to the right for his allowance. Ray Castillon, who was following closely behind, instinctively veered to the left but it was also the moment when Reynaldo Gamot sharply turned to the left towards the side road. At this juncture both were moving obliquely to the left. Thus the motorcycle sliced into the side of the jeepney throwing the driver forward so that his forehead hit the angle bar on the left front door of the jeepney even as the motorcycle shot forward and the jeepney veered back to the right and sped away.

...

The testimonies of the witnesses Frias, Opada, Labang and Sumile show that he did not stop even for a second, or less before making the left turn. On the contrary, he slightly veered to the right immediately followed by the abrupt and sudden turn to the left in order to enter the side road. It is apparent that Reynaldo Gamot did not keep a lookout for vehicles or persons following him before proceeding to turn left. He failed to take into account the possibility that others may be following him. He did not employ the necessary precaution to see to it that the road was clear.¹⁰

Clearly, the abrupt and sudden left turn by Reynaldo, without first establishing his right of way, was the proximate cause of the mishap which claimed the life of Ray and injured Sergio. Proximate cause is defined as that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred.¹¹ The cause of the collision is traceable to the negligent act of Reynaldo for, as the trial court correctly held, *without that left turn executed with no precaution, the mishap in all probability would not have happened.*¹²

Petitioner misunderstood our ruling in *Raynera v. Hiceta*.¹³ That case also involved a motorcycle crashing into the left rear portion of another vehicle, and we declared therein that drivers of vehicles "who bump the rear of another vehicle" are presumed to be "the cause of the accident, **unless contradicted by other evidence**".¹⁴ In *Raynera*, the death of the victim was solely attributable to his own negligence in bumping the rear of the trailer truck which was traveling ahead of him at 20 to 30 kilometers per hour. Raynera, being the driver of the rear vehicle, had full control of the situation as he was in a position to observe the vehicle in front of him. The trailer truck therein did not make a sudden left turn as in the case at bar. Thus, the theory that drivers of vehicles "who bump the rear of another vehicle" are presumed to be the cause of the accident is, as in this case, sufficiently contradicted by evidence, which is the sudden left turn made by Reynaldo which proximately caused the collision.

While we agree with the trial court that Ray was likewise guilty of contributory negligence as defined under Article 2179 of the Civil Code, we find it equitable to increase the ratio of apportionment of damages on account of the victim's negligence.

Article 2179 reads as follows:

When the plaintiff's negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence.¹⁵ The determination of the mitigation of the defendant's liability varies depending on the circumstances of each case. The Court had sustained a mitigation of **50%** in *Rakes v. AG & P*;¹⁶ **20%** in *Phoenix Construction, Inc. v. Intermediate Appellate Court*¹⁷ and *LBC Air Cargo, Inc. v. Court of Appeals*;¹⁸ and **40%** in *Bank of the Philippine Islands v. Court of Appeals*¹⁹ and *Philippine Bank of Commerce v. Court of Appeals*.²⁰

In the case at bar, it was established that Ray, at the time of the mishap: (1) was driving the motorcycle at a high speed; (2) was tailgating the Tamaraw jeepney; (3) has imbibed one or two bottles of beer; and (4) was not wearing a protective helmet.²¹ These circumstances, although not constituting the proximate cause of his demise and injury to Sergio, contributed to the same result. The contribution of these circumstances are all considered and determined in terms of percentages of the total cause. Hence, pursuant to *Rakes v. AG & P*, the heirs of Ray Castillon shall recover damages only up to 50% of the award. In other words, 50% of the damage shall be borne by the private respondents; the remaining 50% shall be paid by the petitioner.

Anent the award of loss of earning capacity, we agree with the petitioner that the trial court erred in the computation of the net earnings.

In considering the earning capacity of the victim as an element of damages, the following factors are considered in determining the compensable amount of lost earnings: (1) the number of years for which the victim would otherwise have lived; and (2) the rate of loss sustained by the heirs of the deceased. Jurisprudence provides that the first factor, *i.e.*, life expectancy, is computed by applying the formula $(2/3 \times [80 - \text{age at death}])$ adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. As to the second factor, it is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. **The net earning is ordinarily computed at fifty percent (50%) of the gross earnings.** Thus, the formula used by this Court in computing loss of earning capacity is: **Net Earning Capacity = $[2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$.**²²

It was established that Ray was 35 at the time of his death and was earning a gross annual income of P31,876.00 as a driver at the Mindanao State University. In arriving at the net earnings, the trial court deducted from the gross annual income the annual living expenses in the amount of P9,672.00, broken down as follows: P20.00 a day for travel or P520.00 per month; P60.00 a month for cigarettes; P26.00 for drinks; and other personal expenses like clothing, toiletries, etc. estimated at P200.00 per month.²³ The amount of P9,672.00, however, appears unrealistic, and constitutes only 30.34% of the gross earnings. It even includes expenses for cigarettes which by no means can be classified as a necessary expense. Using the cited formula with the net earnings computed at 50% of the gross earnings, a detailed computation is as follows:

$$\text{NET EARNING} = \text{LIFE EXPECTANCY } [2/3 (80 - \text{age}) \times \text{GROSS ANNUAL} - \text{LIVING EXPENSES}$$

CAPACITY (X)	at the time of death]]	INCOME (GAI)	(50% of GAI)
X	= [2/3 (80-35)]	x [P31,876.00	-50% x P31,876.00]
X	= [2/3 (45)]	x [P31,876.00	- P15,938.00]
X	= 30	x 15,938.00	
X	= P478,140.00		

We sustain the awards of P33,215.00 as funeral and burial expenses being supported with receipts;²⁴ P50,000.00 as death indemnity; and P50,000.00 as moral damages. However, the award of P20,000.00 as attorney's fees must be deleted for lack of basis.

The indemnity for death caused by a *quasi-delict* used to be pegged at P3,000.00,²⁵ based on Article 2206 of the Civil Code, which reads:

ART. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least **three thousand pesos**, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period of not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

However, the amount has been gradually increased through the years. At present, prevailing jurisprudence fixes the amount at P50,000.00.²⁶

Paragraph 3 of the same provision also serves as the basis for the award of moral damages in *quasi-delict*. The reason for the grant of moral damages has been explained, thus:

... the award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted. The intensity of the pain experienced by the relatives of the victim is proportionate to the intensity of affection for him and bears no relation whatsoever with the wealth or means of the offender.²⁷

While it is true that there can be no exact or uniform rule for measuring the value of human life and the measure of damages cannot be arrived at by a precise mathematical calculation,²⁸ we hold that the trial court's award of moral damages of P50,000.00 for the death of Ray Castillon is in accord with the prevailing jurisprudence.²⁹

With respect to attorney's fees, it is well settled that the same should not be awarded in the absence of stipulation except under the instances enumerated in Article 2208 of the Civil Code. The trial court did not indicate the basis for its award. As we have held in *Rizal Surety and Insurance Company v. Court of Appeals*:³⁰

"Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought. While judicial discretion is here extant, an award thereof demands, nevertheless, a factual, legal or equitable justification. The matter cannot and should not be left to speculation and conjecture (*Mirasol vs. De la Cruz*, 84 SCRA 337; *Stronghold Insurance Company, Inc. vs. Court of Appeals*, 173 SCRA 619).

In the case at bench, the records do not show enough basis for sustaining the award for attorney's fees and to adjudge its payment by petitioner..."

Likewise, this Court held in *Stronghold Insurance Company, Inc. vs. Court of Appeals* that:

"In *Abrogar v. Intermediate Appellate Court* [G.R. No. 67970, January 15, 1988, 157 SCRA 57] the Court had occasion to state that '[t]he reason for the award of attorney's fees must be stated in the text of the court's decision, otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.'

WHEREFORE, in view of the foregoing, the petition is DENIED. The assailed decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the net earnings is computed at 50% of the gross annual income to

conform with the prevailing jurisprudence, and the FURTHER MODIFICATION that petitioner NELEN LAMBERT is ordered to pay the heirs of Ray Castillon only 50% of the damages herein awarded, except attorney's fees which is DELETED for lack of basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

Footnotes

¹ Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong.

² TSN, July 6, 1992, pp. 20-21.

³ *Id.* at 21-26.

⁴ Records, pp. 1-5.

⁵ *Id.* at 6-10.

⁶ *Rollo*, pp. 59-60.

⁷ *Id.* at 47.

⁸ *Id.* at 15-16.

⁹ See *Imperial v. Jaucian*, G.R. No. 149004, 14 April 2004.

¹⁰ *Rollo*, p. 53.

¹¹ *Casa Montessori Internationale v. BPI*, G.R. No. 149507, 28 May 2004.

¹² *Rollo*, p. 54.

¹³ 365 Phil. 546 (1999).

¹⁴ *Id.* at 554.

¹⁵ *Syki v. Begasa*, G.R. No. 149149, 23 October 2003, 414 SCRA 237, 244.

¹⁶ 7 Phil. 359 (1907).

¹⁷ G.R. No. L-65295, 10 March 1987, 148 SCRA 353.

¹⁸ 311 Phil. 715 (1995).

¹⁹ G.R. No. 102383, 26 November 1992, 216 SCRA 51.

²⁰ 336 Phil. 667 (1997).

²¹ *Rollo*, p. 54.

²² *Pleyto v. Philippine Rabbit Bus Lines, Inc.*, G.R. No. 148737, 16 June 2004.

²³ *Rollo*, pp. 57-58.

²⁴ Records, pp. 121, 128, & 131.

²⁵ *Metro Manila Transit Corporation v. Court of Appeals*, 359 Phil. 18, 35 (1998).

²⁶ *Pestaño v. Sps. Sumayang*, G.R. No. 139875, 4 December 2000, 346 SCRA 870, 879.

²⁷ *Cesar Sangco, Torts and Damages*, 1994 edition, p. 986.

²⁸ *Sps. Hernandez v. Sps. Dolor*, G.R. No. 160286, 30 July 2004.

²⁹ *People v. Hapa*, 413 Phil. 679, 699-700 (2001).

³⁰ 329 Phil. 786, 811 (1996).

The Lawphil Project - Arellano Law Foundation

 **BACK**

 **TOP**