

## THIRD DIVISION

[ G.R. No. 161803, February 04, 2008 ]

**DY TeBAN TRADING, INC., Petitioner, vs. JOSE CHING AND/OR  
LIBERTY FOREST, INC. and CRESILITO M.  
LIMBAGA, Respondents.**

### D E C I S I O N

**REYES, R.T., J.:**

THE vehicular collision resulting in damages and injuries in this case could have been avoided if the stalled prime mover with trailer were parked properly and equipped with an early warning device. It is high time We sounded the call for strict enforcement of the law and regulation on traffic and vehicle registration. **Panahon na para mahigpit na ipatupad ang batas at regulasyon sa trapiko at pagpapatala ng sasakyan.**

Before Us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) modifying that<sup>[2]</sup> of the Regional Trial Court (RTC) in Butuan City finding private respondents Liberty Forest, Inc. and Cresilito Limbaga liable to petitioner Dy Teban Trading, Inc. for damages.

#### Facts

On July 4, 1995, at around 4:45 a.m., Rogelio Ortiz, with helper Romeo Catamora, was driving a Nissan van owned by petitioner Dy Teban Trading, Inc. along the National Highway in *Barangay* Sumilihon, Butuan City, going to Surigao City. They were delivering commercial ice to nearby *barangays* and municipalities. A Joana Paula passenger bus was cruising on the opposite lane towards the van. In between the two vehicles was a parked prime mover with a trailer, owned by private respondent Liberty Forest, Inc.<sup>[3]</sup>

The night before, at around 10:00 p.m., the prime mover with trailer suffered a tire blowout. The driver, private respondent Cresilito Limbaga, parked the prime mover askew occupying a substantial portion of the national highway, on the lane of the passenger bus. He parked the prime mover with trailer at the shoulder of the road with the left wheels still on the cemented highway and the right wheels on the sand and gravel shoulder of the highway.<sup>[4]</sup> The prime mover was not equipped with triangular, collapsible reflectorized plates, the early warning device required under Letter of Instruction No. 229. As substitute, Limbaga placed a banana trunk with leaves on the front and the rear portion of the prime mover to warn incoming motorists. It is alleged that Limbaga likewise placed kerosene lighted tin cans on the front and rear of the trailer.<sup>[5]</sup>

To avoid hitting the parked prime mover occupying its lane, the incoming passenger

bus swerved to the right, onto the lane of the approaching Nissan van. Ortiz saw two bright and glaring headlights and the approaching passenger bus. He pumped his break slowly, swerved to the left to avoid the oncoming bus but the van hit the front of the stationary prime mover. The passenger bus hit the rear of the prime mover.<sup>[6]</sup>

Ortiz and Catamora only suffered minor injuries. The Nissan van, however, became inoperable as a result of the incident. After the collision, SPO4 Teofilo Pame conducted an investigation and submitted a police traffic incident investigation report.<sup>[7]</sup>

On October 31, 1995, petitioner Nissan van owner filed a complaint for damages<sup>[8]</sup> against private respondents prime mover owner and driver with the RTC in Butuan City. The Joana Paula passenger bus was not impleaded as defendant in the complaint.

### **RTC Disposition**

On August 7, 2001, the RTC rendered a decision in favor of petitioner Dy Teban Trading, Inc. with a *fallo* reading:

WHEREFORE, judgment is hereby rendered directing, ordaining and ordering:

a) That defendants Liberty Forest, Inc. and Cresilito M. Limbaga pay, jointly and solidarily, plaintiff Dy Teban Trading, Inc. the amounts of P279,832.00 as actual and compensatory damages, P30,000.00 as attorney's fees and P5,000.00 as expenses of litigation;

b) That all money claims of plaintiff Rogelio C. Ortiz are dismissed;

c) That defendant Jose Ching is absolved from any civil liability or the case against him dismissed;

d) That the counterclaim of all the defendants is dismissed; and

e) That defendants Liberty Forest, Inc. and Cresilito M. Limbaga to pay, jointly and solidarily, the costs.

SO ORDERED.<sup>[9]</sup>

The RTC held that the proximate cause of the three-way vehicular collision was improper parking of the prime mover on the national highway and the absence of an early warning device on the vehicle, thus:

The court finds that the proximate cause of the incidents is the negligence and carelessness attributable to the defendants. When the trailer being pulled by the prime mover suffered two (2) flat tires at Sumilihon, the prime mover and trailer were parked haphazardly, as the right tires of the prime mover were the only ones on the sand and gravel shoulder of the highway while the left tires and all the tires of the trailer

were on the cemented pavement of the highway, occupying almost the whole of the right lane on the direction the prime mover and trailer were traveling. The statement of Limbaga that he could not park the prime mover and trailer deeper into the sand and gravel shoulder of the highway to his right because there were banana plants is contradicted by the picture marked Exhibit "F." The picture shows that there was ample space on the shoulder. If defendant Limbaga was careful and prudent enough, he should have the prime mover and trailer traveled more distance forward so that the bodies of the prime mover and trailer would be far more on the shoulder rather than on the cemented highway when they were parked. x x x The court has some doubts on the statement of witness-driver Limbaga that there were banana trunks with leaves and lighted tin cans with crude oil placed 3 strides in front of the prime mover and behind the trailer because the testimonies of witnesses Rogelio C. Ortiz, driver of the ice van, Romeo D. Catamora, helper of the ice van, and Police Traffic Investigator SPO3 Teofilo M. Pame show that there were no banana trunks with leaves and lighted tin cans at the scene of the incident. But even assuming that there were banana trunks with leaves but they were placed close to the prime mover and trailer as they were placed 3 strides away which to the mind of the court is equivalent approximately to 3 meters and with this distance, approaching vehicles would have no sufficient time and space to make a complete stop, especially if the vehicles are heavy and loaded. If there were lighted tin cans, it was not explained by the defendants why the driver, especially driver witness Ortiz, did not see them.

x x x x

Defendant Liberty Forest, Inc. did not exercise the diligence of a good father of a family in managing and running its business. The evidence on record shows that it failed to provide its prime mover and trailer with the required "early warning devices" with reflectors and it did not keep proper maintenance and condition of the prime mover and the trailer. The circumstances show that the trailer were provided with wornout tires and with only one (1) piece of spare tire. The pictures marked Exhibit "3" and "4" show that two (2) flat tires suffered by the trailer and these two (2) tires were attached to one of the two (2) I-beams or axles attached to the rear of the trailer which axle is very near but behind the other axle and with the location of the 2 I-beams, it would have the other I-beam that would have suffered the flat tires as it has to bear the brunt of weight of the D-8 bulldozer. The bulldozer was not loaded directly above the two (2) I-beams as 2 I-beams, as a pair, were attached at the far rear end of the trailer.

x x x x

However, defendant Jose Ching should be absolved of any liability as there is no showing that he is the manager or CEO of defendant Liberty Forest, Inc. Although in the answer, it is admitted that he is an officer of the defendant corporation, but it is not clarified what kind of position he is holding, as he could be an officer as one of the members of the Board of Directors or a cashier and treasurer of the corporation. Witness

Limbaga in his testimony mentioned a certain Boy Ching as the Manager but it was never clarified whether or not Boy Ching and defendant Jose Ching is one and the same person.<sup>[10]</sup> Private respondents appealed to the CA.

### CA Disposition

On August 28, 2003, the CA reversed the RTC decision, disposing as follows:

**WHEREFORE**, premises considered, the decision dated August 7, 2001 of the Regional Trial Court, Branch 2, Butuan City in Civil Case No. 4360 is hereby **PARTLY MODIFIED** by absolving the defendants-appellants/appellees of any liability to plaintiffs-appellants/appellees by reason of the incident on July 4, 1995.

The dismissal of the case against Jose Ching, the counterclaim of defendants-appellants/appellees and the money claim of Rogelio Ortiz **STANDS**.

**SO ORDERED.**<sup>[11]</sup>

In partly reversing or partly modifying the RTC decision, the CA held that the proximate cause of the vehicular collision was the failure of the Nissan van to give way or yield to the right of way of the passenger bus, thus:

It was stated that the Joana Paula bus in trying to avoid a head-on collision with the truck, sideswept the parked trailer loaded with bulldozer.

Evidently, the driver of the Joana Paula bus was aware of the presence on its lane of the parked trailer with bulldozer. For this reason, it proceeded to occupy what was left of its lane and part of the opposite lane. The truck occupying the opposite lane failed to give way or yield the right of way to the oncoming bus by proceeding with the same speed. The two vehicles were, in effect, trying to beat each other in occupying a single lane. The bus was the first to occupy the said lane but upon realizing that the truck refused to give way or yield the right of way, the bus, as a precaution, geared to its right where the trailer was parked. Unfortunately, the bus miscalculated its distance from the parked trailer and its rear right side hit the protruding blade of the bulldozer then on the top of the parked trailer. The impact of the collision on its right rear side with the blade of the bulldozer threw the bus further to the opposite lane, landing its rear portion on the shoulder of the opposite lane.

x x x x

Facts of the case reveal that when Ortiz, the driver of the truck, failed to give the Joana Paula bus the space on the road it needed, the latter vehicle scraped its rear right side on the protruded bulldozer blade and the impact threw the bus directly on the path of the oncoming truck. This made plaintiffs-appellants/appellees conclude that the Joana Paula bus occupied its lane which forced Ortiz, the driver of the truck, to swerve to

its left and ram the front of the parked trailer.

x x x x

The trailer was parked because its two (2) rear-left tires were blown out. With a bulldozer on top of the trailer and two (2) busted tires, it would be dangerous and quite impossible for the trailer to further park on the graveled shoulder of the road. To do so will cause the flat car to tilt and may cause the bulldozer to fall from where it was mounted. In fact, it appeared that the driver of the trailer tried its best to park on the graveled shoulder since the right-front tires were on the graveled shoulder of the road.

The lower court erred in stating that the Joana Paula bus swerved to the left of the truck because it did not see the parked trailer due to lack of warning sign of danger of any kind that can be seen from a distance. The damage suffered by the Joana Paula bus belied this assessment. As stated before, the Joana Paula bus, with the intention of passing first which it did, first approached the space beside the parked trailer, veered too close to the parked trailer thereby hitting its rear right side on the protruding bulldozer blade. Since the damage was on the rear right most of the bus, it was clearly on the space which was wide enough for a single passing vehicle but not sufficient for two (2) passing vehicles. The bus was thrown right to the path of the truck by the impact of the collision of its rear right side with the bulldozer blade.<sup>[12]</sup>

The CA disagreed with the RTC that the prime mover did not have an early warning device. The appellate court accepted the claim of private respondent that Limbaga placed kerosene lighted tin cans on the front and rear of the trailer which, in *Baliwag Transit, Inc. v. Court of Appeals*,<sup>[13]</sup> may act as substitute early warning device. The CA stated:

Likewise, it was incorrect for the lower court to state that there was no warning sign of danger of any kind, most probably referring to the absence of the triangular reflectorized plates. The police sketch clearly indicated the stack of banana leaves placed at the rear of the parked trailer. The trailer's driver testified that they placed kerosene lighted tin can at the back of the parked trailer.

A pair of triangular reflectorized plates is not the only early warning device allowed by law. The Supreme Court (in *Baliwag Transit, Inc. v. Court of Appeals*) held that:

"x x x Col. Dela Cruz and Romano testified that they did not see any early warning device at the scene of the accident. They were referring to the triangular reflectorized plates in red and yellow issued by the Land Transportation Office. However, the evidence shows that Recontique and Ecala placed a kerosene lamp or torch at the edge of the road, near the rear portion of the truck to serve as an early warning device. This substantially complies with Section 34(g) of the Land Transportation and Traffic Code x x x