

## FIRST DIVISION

[ G.R. NO. 169891, November 02, 2006 ]

### PHILIPPINE NATIONAL RAILWAYS, PETITIONER, VS. ETHEL BRUNTY AND JUAN MANUEL M. GARCIA, RESPONDENTS.

#### DECISION

**CALLEJO, SR., J.:**

This is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 47567 and its Resolution<sup>[2]</sup> denying the motion for reconsideration thereof. The assailed decision affirmed with partial modification the ruling<sup>[3]</sup> of the Regional Trial Court (RTC) of Manila, Branch 20, directing petitioner Philippine National Railways (PNR) to indemnify respondents Ethel Brunty and Juan Manuel M. Garcia for the death of Rhonda Brunty, and to pay actual and moral damages, attorney's fees and cost of suit.

Rhonda Brunty, daughter of respondent Ethel Brunty and an American citizen, came to the Philippines for a visit sometime in January 1980. Prior to her departure, she, together with her Filipino host Juan Manuel M. Garcia, traveled to Baguio City on board a Mercedes Benz sedan with plate number FU 799, driven by Rodolfo L. Mercelita. It was about 12:00 midnight, January 25, 1980. By then, PNR Train No. T-71, driven by Alfonso Reyes, was on its way to Tutuban, Metro Manila<sup>[4]</sup> as it had left the La Union station at 11:00 p.m., January 24, 1980.

By 2:00 a.m., Rhonda Brunty, Garcia and Mercelita were already approaching the railroad crossing at *Barangay* Rizal, Moncada, Tarlac. Mercelita, driving at approximately 70 km/hr, drove past a vehicle, unaware of the railroad track up ahead and that they were about to collide with PNR Train No. T-71. Mercelita was instantly killed when the Mercedes Benz smashed into the train; the two other passengers suffered serious physical injuries.<sup>[5]</sup> A certain James Harrow<sup>[6]</sup> brought Rhonda Brunty to the Central Luzon Doctor's Hospital in Tarlac, where she was pronounced dead after ten minutes from arrival. Garcia, who had suffered severe head injuries, was brought via ambulance to the same hospital. He was transferred to the Manila Doctor's Hospital, and later to the Makati Medical Center for further treatment.<sup>[7]</sup>

On July 28, 1981, Ethel Brunty sent a demand letter<sup>[8]</sup> to the PNR demanding payment of actual, compensatory, and moral damages, as a result of her daughter's death. When PNR did not respond, Ethel Brunty and Garcia, filed a complaint<sup>[9]</sup> for damages against the PNR before the RTC of Manila. The case was raffled to Branch 20 and was docketed as Civil Case No. 83-18645. They alleged that the death of Mercelita and Rhonda Brunty, as well as the physical injuries suffered by Garcia, were the direct and proximate result of the gross and reckless negligence of PNR in not providing the necessary equipment at the railroad crossing in *Barangay* Rizal,

Municipality of Moncada, Tarlac. They pointed out that there was no flagbar or red light signal to warn motorists who were about to cross the railroad track, and that the flagman or switchman was only equipped with a hand flashlight.<sup>[10]</sup> Plaintiffs likewise averred that PNR failed to supervise its employees in the performance of their respective tasks and duties, more particularly the pilot and operator of the train.<sup>[11]</sup> They prayed for the payment of the following damages:

- 1.) P200,000.00 as actual and compensatory damages to plaintiff Ethel Brunty;
- 2.) P2,800,000.00 for compensatory damages to plaintiff Ethel Brunty representing lost or unearned income of Rhonda Brunty;
- 3.) Such amounts of moral and exemplary damages as may be warranted by the evidence adduced, to plaintiff Ethel Brunty;
- 4.) At least P64,057.61 as actual damages representing medical expenses to plaintiff Juan Manuel M. Garcia and at least P1,000,000.00 as unearned or lost income of said plaintiff;
- 5.) At least P72,760.00 as actual damages representing cost of the Mercedes Benz car to plaintiff Juan Manuel M. Garcia;
- 6.) Such amounts of moral and exemplary damages as may be warranted by the evidence adduced, to plaintiff Juan Manuel M. Garcia; and
- 7.) Attorney's fees equivalent to at least 15% of the total award to plaintiffs herein.<sup>[12]</sup>

In its Answer,<sup>[13]</sup> PNR claimed that it exercised the diligence of a good father of a family not only in the selection but also in the supervision of its employees.<sup>[14]</sup> By way of special and affirmative defense, it stressed that it had the right of way on the railroad crossing in question, and that it has no legal duty to put up a bar or red light signal in any such crossing. It insisted that there were adequate, visible, and clear warning signs strategically posted on the sides of the road before the railroad crossing. It countered that the immediate and proximate cause of the accident was Mercelita's negligence, and that he had the last clear chance to avoid the accident. The driver disregarded the warning signs, the whistle blasts of the oncoming train and the flashlight signals to stop given by the guard.<sup>[15]</sup> As counterclaim, it prayed that it be awarded actual and compensatory damages, and litigation expenses.<sup>[16]</sup>

Plaintiffs filed an Amended Complaint<sup>[17]</sup> dated July 28, 1986 to include, as party plaintiff, Chemical Industries of the Philippines, Inc. (Chemphil), Garcia's employer, who claimed to have paid for the latter's medical and hospitalization expenses, the services rendered by the funeral parlor of the deceased, and the expenses in transferring the remains of Rhonda Brunty to the United States.<sup>[18]</sup>

After trial on the merits, the RTC rendered its Decision<sup>[19]</sup> on May 21, 1990 in favor of plaintiffs. The *fallo* reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Ethel Brunty and Juan Manuel M. Garcia and against the defendant Philippine National Railways directing the latter to pay the former the sum of:

1. Thirty Thousand Pesos (P30,000.00) Philippine Currency, for the death of Rhonda Brunty formerly a resident of 1595 Ashland Avenue, Des Plaines, Illinois, U.S.A.;
2. One Million Pesos (P1,000,000.00) Philippine Currency for moral and actual damages due the heirs of Rhonda Brunty;
3. Seventy-Two Thousand Seven Hundred Sixty Pesos (P72,760.00) Philippine Currency for damages sustained by the Mercedes Benz;
4. Fifty Thousand Pesos (P50,000.00) Philippine Currency as and for attorney's fees, and;
5. Costs of suit.

SO ORDERED.<sup>[20]</sup>

Aggrieved, the PNR appealed the case to the CA, raising the following errors:

I.

THE TRIAL COURT ERRED IN ADJUDGING DEFENDANT-APPELLANT PNR LIABLE FOR THE DEATH OF RHONDA BRUNTY AND THE CONSEQUENT AWARD OF DAMAGES DUE THE HEIRS OF RHONDA BRUNTY.

II.

THE TRIAL COURT ERRED IN ADJUDGING DEFENDANT-APPELLANT PNR LIABLE FOR THE DAMAGES SUFFERED BY PLAINTIFF-APPELLEE'S MERCEDES BENZ IN THE AMOUNT OF SEVENTY-TWO THOUSAND SEVEN HUNDRED AND SIXTY PESOS (P72,760.00).

III.

THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES TO THE PLAINTIFFS-APPELLEES.<sup>[21]</sup>

In its Brief, PNR insisted that the sole and proximate cause of the accident was the negligence and recklessness of Garcia and Mercelita.<sup>[22]</sup> It insisted that it had provided adequate warning signals at the railroad crossing<sup>[23]</sup> and had exercised due care in the selection and supervision of its employees.<sup>[24]</sup> The RTC erred in awarding damages to Rhonda Brunty as she cannot be allowed to receive what she is not in a position to give, having been a non-resident alien who did not own a property in the Philippines.<sup>[25]</sup> It likewise questioned the award of damages on the Mercedes Benz as well as the grant of attorney's fees.<sup>[26]</sup> At the very least, Mercelita was guilty of contributory negligence.<sup>[27]</sup>

For their part, appellees countered that appellant was grossly and recklessly negligent in not properly providing the necessary equipment at the railroad crossing in Rizal, Moncada, Tarlac;<sup>[28]</sup> appellant was negligent in not exercising due diligence of a good father of a family in the supervision of its employees, particularly the train operator Alfonso Reyes;<sup>[29]</sup> the car was driven in a careful and diligent manner, and at a moderate speed, with due regard to all traffic rules and regulations at that particular time;<sup>[30]</sup> the doctrine of "last clear chance" is not applicable;<sup>[31]</sup> Ethel Brunty is a non-resident alien who can rightfully file the instant case;<sup>[32]</sup> and they are entitled to recover damages from appellant.<sup>[33]</sup>

The CA rendered the assailed Decision<sup>[34]</sup> on August 15, 2005. The dispositive portion reads:

**WHEREFORE**, premises considered, the assailed decision is hereby **AFFIRMED** with **PARTIAL MODIFICATIONS**, increasing the death indemnity award from P30,000.00 to P50,000.00, and deleting the award for damages sustained by the Mercedes Benz.

**SO ORDERED.**<sup>[35]</sup>

The appellate court affirmed the findings of the RTC as to the negligence of the PNR. Considering the circumstances prevailing at the time of the fatal accident, it ruled that the alleged safety measures installed by the PNR at the railroad crossing were not merely inadequate – they did not satisfy the well-settled safety standards in transportation.<sup>[36]</sup> However, the CA did not agree with the RTC's findings on the contributory negligence of Mercelita, the driver of the Mercedes Benz. It held that Mercelita could not have foreseen the harm that would befall him and the two other passengers under the prevailing circumstances, thus, could not be considered guilty of contributory negligence.<sup>[37]</sup>

The PNR, now petitioner, comes before this Court in this Petition for Review on *Certiorari* on the following grounds:

I.

THE COURT OF APPEALS ERRED IN MANIFESTLY OVERLOOKING CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES AND WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION SUCH AS:

THE RESPONDENTS' DRIVER OVERTOOK ANOTHER VEHICLE BY ACCELERATING AT 70 KILOMETERS PER HOUR WITHIN JUST 50 YARDS AWAY FROM THE RAILROAD TRACKS.

II.

THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT REGARDING CONTRIBUTORY NEGLIGENCE OF THE RESPONDENTS' DRIVER.

III.

THE COURT OF APPEALS ERRED IN NOT APPLYING THE DOCTRINE OF  
LAST CLEAR CHANCE IN THE INSTANT CASE.<sup>[38]</sup>

Petitioner insists that the proximate cause of the mishap was Mercelita's disregard of traffic rules and regulations. Had the court considered the fact that Mercelita had overtaken another vehicle a few yards before the railroad track, it would have reached a different conclusion.<sup>[39]</sup> Moreover, petitioner asserts, considering that the decisions of the RTC and the CA vary as to whether or not Mercelita was guilty of contributory negligence, the findings of the RTC should prevail. Thus, Mercelita's contributory negligence should not have been ignored.<sup>[40]</sup> Lastly, petitioner avers that since there is freedom of control and greater maneuverability on the part of motor vehicles, it is obvious that in railroad crossings, they have the last clear chance to prevent or avoid an unwanted accident from taking place.<sup>[41]</sup>

In their Comment<sup>[42]</sup> on the petition, respondents reiterate the findings of the RTC and the CA that the breach by petitioner of its legal duty to provide adequate and necessary public safety device and equipment within the area or scene of the accident was the proximate cause of the mishap.<sup>[43]</sup> While it is true that as a general rule, the trial court is in the best position to evaluate and observe the conduct and demeanor of the witnesses presented during the trial, the CA, in the exercise of its appellate jurisdiction, has the vested right to modify, reject, or set aside the trial court's evaluation and findings.<sup>[44]</sup> As to the application of the doctrine of last clear chance, respondents claim that said issue is being raised for the first time in this petition.<sup>[45]</sup> Lastly, respondents cite foreign jurisprudence stating that if the violation is one which gives rise to liability *per se* for any resulting injury, the defenses ordinarily available in actions for diligence are barred and the contributory negligence of the person injured is no defense.<sup>[46]</sup>

The Court is thus tasked to answer the following factual questions: (1) As between petitioner and Mercelita, whose negligence resulted in the unfortunate collision? (2) Is Mercelita (the driver of the Mercedes Benz) guilty of contributory negligence? Finally, the application in this case of the doctrine of last clear chance is likewise in question.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.<sup>[47]</sup> In *Corliss v. Manila Railroad Company*,<sup>[48]</sup> this Court held that negligence is want of the care required by the circumstances. It is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require.<sup>[49]</sup> In determining whether or not there is negligence on the part of the parties in a given situation, jurisprudence<sup>[50]</sup> has laid down the following test: Did defendant, in doing the alleged negligent act, use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, the person is guilty of negligence. The law, in effect, adopts the standard supposed to be supplied by the imaginary conduct of the discreet *pater familias* of the Roman law.

The issue of who, between the parties, was negligent was thoroughly discussed by