

## SECOND DIVISION

[ G.R. No. 182705, July 18, 2014 ]

**VICENTE JOSEFA, PETITIONER, VS. MANILA ELECTRIC  
COMPANY, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

We resolve the petition for review on *certiorari*<sup>[1]</sup> filed by petitioner Vicente Josefa, doing business under the name and style of 747 Lumber and Construction Supply, to challenge the January 31, 2008 decision<sup>[2]</sup> and the April 29, 2008 resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 87512.

#### **The Factual Antecedents**

At around 1:45 p.m. on April 21, 1991, a dump truck, a jeepney and a car figured in a vehicular accident along Ortigas Avenue, Pasig City.<sup>[4]</sup> As a result of the accident, a 45-foot wooden electricity post, three 75 KVA transformers, and other electrical line attachments were damaged.<sup>[5]</sup> Upon investigation, respondent Manila Electric Company (*Meralco*) discovered that it was the truck with plate number PAK-874 and registered in Josefa's name that hit the electricity post.<sup>[6]</sup>

In a letter dated April 19, 1993, Meralco demanded from Josefa reimbursement for the replacement cost of the electricity post and its attachments, but Josefa refused to pay.<sup>[7]</sup> Thus, on September 28, 1993, Meralco sued Josefa and Pablo Manoco, the truck driver, for damages before the Regional Trial Court (RTC) of Pasig City.<sup>[8]</sup>

#### **Proceedings before the RTC**

In its complaint, Meralco alleged that Manoco's reckless driving resulted in damage to its properties. It also imputed primary liability on Josefa for his alleged negligence in the selection and supervision of Manoco. It thus prayed for the indemnification of the amount of P384,846.00 as actual damages, P50,000.00 as attorney's fees, P10,000.00 as litigation expenses, and the costs of the suit.<sup>[9]</sup>

In defense, Josefa denied that Manoco was his employee when the accident occurred. He also maintained that he exercised the diligence of a good father of a family in the selection and supervision of all his employees. As a counterclaim, he sought the payment of attorney's fees for Meralco's filing of a baseless complaint.<sup>[10]</sup>

On January 11, 1994, Meralco amended its complaint to correct the name "Pablo Manoco" to Pablo Manojó Bautista (*Bautista*),<sup>[11]</sup> but soon dropped him as a party

defendant in the case for failure to serve him summons.<sup>[12]</sup>

### **A. Evidence for Meralco**

During trial, Meralco offered the testimonies of six witnesses as well as documentary evidence to substantiate its claim for damages against Josefa:

Juan Fernandez, Meralco's senior legal investigator, testified that he arrived at the scene of the accident at around 2:30 p.m. on that fateful day and saw Meralco employees installing a new electricity post. He interviewed the people in the vicinity who told him that it was the truck that rammed the electricity post.<sup>[13]</sup> He thus proceeded to the police station at Caruncho Complex, Pasig City and talked to SPO2 Alexander Galang who informed him that the owner of the offending vehicle was Josefa.<sup>[14]</sup> Fernandez also identified and authenticated the investigation report dated April 21, 1991<sup>[15]</sup> (Exhibit "A") summarizing the result of his investigation.<sup>[16]</sup>

Elmer Albio identified himself as the driver of the jeepney that was involved in the accident. He testified that a truck suddenly hit the rear of his jeepney while he was driving along Ortigas Avenue, Pasig City; he thus lost control of the jeepney and hit a Nissan car on the other lane of the road. Thereafter, the truck hit the electricity post.

SPO2 Manuel Valiente testified that he immediately went to the scene of the accident after a concerned citizen went to the police station and informed him about the accident.<sup>[17]</sup> However, he could no longer recall the truck's exact position with reference to the electricity post at the time of his arrival at the scene of the accident.<sup>[18]</sup>

SPO2 Galang stated that one of his functions as a traffic accident investigator was to record vehicular accidents in the police blotter book. He identified and authenticated a certified true copy of the police blotter dated January 7, 1994 (Exhibit "B") but admitted that he neither saw nor investigated the accident.<sup>[19]</sup>

Vitaliano Espiritu, Meralco's foreman, testified that he replaced the damaged electricity post, transformers, and other electrical line attachments after receiving an emergency radio call from a Meralco personnel.<sup>[20]</sup>

Carlos Zapanta, Meralco's supervising accountant, affirmed that Meralco incurred actual damages totaling P384,846.00. To support his finding, he identified and authenticated two pieces of evidence, the memorandum dated October 7, 1992 (Exhibit "C") and the document dated March 29, 1993 (Exhibit "D"). Exhibit "C" is a letter from Meralco's legal department requesting the accounting department for a computation of actual damages.<sup>[21]</sup> On the other hand, Exhibit "D" provides a detailed computation of actual damages that Meralco allegedly suffered.<sup>[22]</sup> On cross-examination, Zapanta stated that the computation was based on "supplementary time sheets," "trip tickets," and other documents provided by Meralco's distribution office;<sup>[23]</sup> however, Meralco did not present these documents during trial.

In an order dated January 15, 1997, the RTC admitted all documentary evidence

that Meralco offered after its presentation of testimonial evidence.<sup>[24]</sup>

### ***B. Evidence for Josefa***

Upon Meralco's presentment of evidence, Josefa filed a demurrer to evidence<sup>[25]</sup>, but was denied by the RTC.<sup>[26]</sup> Josefa assailed the denial of his demurrer in a petition for *certiorari* before the CA which, however, affirmed the RTC rulings.<sup>[27]</sup> Thereafter, Josefa filed a motion for extension to file a petition for review on *certiorari* before the Court. After we denied the motion for its procedural infirmities,<sup>[28]</sup> the RTC ordered Josefa to present his evidence-in-chief. The RTC eventually declared the case as submitted for decision without Josefa's evidence-in-chief due to the numerous and unreasonable delays that he incurred in the presentation of evidence.<sup>[29]</sup>

#### **The RTC Ruling**

In a decision dated April 10, 2006, the RTC dismissed the complaint for insufficiency of evidence. The RTC held that Meralco failed to establish that it was the truck that hit the electricity post. The RTC ruled that SPO2 Galang's account of the accident was merely hearsay since he did not personally witness the incident. It also did not give probative value to the police blotter entry dated January 7, 1994 since the accident had long occurred in 1991. The RTC likewise denied Meralco's claim for actual damages for lack of evidentiary support.<sup>[30]</sup>

#### **The CA Ruling**

The CA reversed the RTC ruling and held that the RTC erred in disregarding the parties' stipulation at the pre-trial that it was the truck that hit the electricity post. The CA also found that Bautista was Josefa's employee when the accident occurred since Josefa did not specifically deny this material allegation in the amended complaint. It likewise noted that the sheriff's return stated that Bautista was under Josefa's employ until 1993.

The CA concluded that the fact that the truck hit the electricity post was sufficient to hold Josefa vicariously liable regardless of whether Bautista was negligent in driving the truck. In the same breath, the CA also stated that the employer's presumptive liability in quasi-delicts was anchored on injuries caused by the employee's negligence. It further ruled that Josefa failed to rebut the presumption that he negligently selected and supervised Bautista in employment since he did not present his evidence-in-chief during trial. Even assuming that Bautista was not Josefa's employee, the CA maintained that Josefa would still be liable for damages since the law presumes that the registered owner has control of his vehicle and its driver at the time of the accident. It thus ordered Josefa to pay Meralco: (1) P384,846.00 as actual damages; (2) P50,000.00 as attorney's fees; (3) P10,000.00 as expenses of litigation; and (4) double the costs of the suit.

Josefa filed the present petition after the CA denied<sup>[31]</sup> his motion for reconsideration.<sup>[32]</sup>

#### **The Petition**

Josefa argues that the CA gravely erred in reversing the RTC's factual findings. He insists that the finding that it was the truck that hit the electricity post lacks evidentiary support. Furthermore, Meralco failed to substantiate its claim for actual damages by competent testimonial and documentary evidence. Josefa likewise asserts that Meralco is not entitled to attorney's fees since it also contributed to the delay in the proceedings. He points out that Meralco sought for postponements of hearings during trial and failed to assist the sheriff in serving the summons to Bautista.<sup>[33]</sup>

### **The Respondent's Position**

In its *Comment*, Meralco takes the opposite view that it is the RTC ruling that is unsupported by evidence. Meralco maintains that the RTC erroneously ruled in favor of Josefa who did not present his evidence-in-chief during trial. Meralco also posits that Josefa's vicariously liability finds support in Articles 2176 and 2180 of the Civil Code which hold the employer primarily liable for damages caused by the employee who acted within the scope of his assigned tasks. It also asserts that Josefa's unjustified refusal to pay its just and valid claim for actual damages warrants the award of attorney's fees.<sup>[34]</sup>

### **The Issues**

This case presents to us the following issues:

- (1) Whether the truck with plate number PAK-874 hit the electricity post;
- (2) Whether Bautista exercised due diligence in driving when the truck hit the electricity post;
- (3) Whether Josefa is vicariously liable for Bautista's negligence under paragraph 5, Article 2180 of the Civil Code;
  - (a) Whether there is an employer-employee relationship between Bautista and Josefa;
  - (b) Whether Josefa exercised the diligence of a good father of a family in the selection and supervision of Bautista; and
- (4) Whether Meralco is entitled to actual damages, attorney's fees, and expenses of litigation.

### **Our Ruling**

**We partially affirm the CA's ruling.**

***I. The Court may review factual questions in a petition for review on certiorari when a conflict exists in findings of the lower courts***

We are aware that the issues before us involve factual questions which require us to review the presented pieces of evidence before the trial court. While a petition for review on *certiorari* precludes this Court from entertaining factual issues, we can review the pieces of evidence, by way of exception, when a conflict exists in the findings of the RTC and the CA.<sup>[35]</sup> We see this exceptional situation here and thus examine the relevant pieces of evidence presented before the trial court.

***II. Bautista's negligence was the proximate cause of the property damage caused to Meralco***

***A. The truck hit the electricity post***

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. This fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict.<sup>[36]</sup> Thus, for a quasi-delict case to prosper, the complainant must establish: (1) damages to the complainant; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond, was guilty; and **(3) the connection of cause and effect between such negligence and the damages.**<sup>[37]</sup> With respect to the third element, the negligent act or omission must be the proximate cause of the injury.

Contrary to the CA's finding, the parties did not stipulate that the truck hit the electricity post. The pre-trial order shows that the parties merely agreed that the truck "was **involved** in an accident on April 21, 1991 at around 1:45 o'clock in the afternoon along Ortigas Avenue, Rosario, Pasig City." The parties in fact posed the issue of whether the truck rammed the electricity post as one of the factual questions to be resolved by the trial court during the pre-trial conference.<sup>[38]</sup>

We also agree with Josefa that Fernandez and SPO2 Galang's testimonies regarding the truck hitting the electricity post are hearsay and should not be given credence. Fernandez and SPO2 Galang merely testified and conveyed to the court matters only narrated to them by other people who were not presented in court. Hearsay evidence has no probative value because it is merely the witness' recitation of what someone else has told him, whether orally or in writing. A witness can testify only to those facts which are derived from his own perception.<sup>[39]</sup>

Nonetheless, Meralco has sufficiently established the direct causal link between the truck and the electricity post through Abio's testimony. Abio categorically stated during trial that he saw the truck hit the electricity post. We find his first-hand account of the incident during the direct-examination frank and straightforward. More importantly, Josefa failed to impeach the veracity of Abio's testimony during the cross-examination. Abio even reiterated that it was Josefa's truck that rammed the electricity post.<sup>[40]</sup> We thus give full faith and credence to his positive, un rebutted, and categorical declaration on the witness stand, made under solemn oath, that it was the truck that caused damage to Meralco's property.

Even without Abio's testimony, it does not escape this Court's attention that Josefa **judicially admitted** in his motions and pleading that his truck hit the electricity