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SECOND DIVISION

[G.R. No. 182356, December 04, 2013]

DRA. LEILA A. DELA LLANA, PETITIONER, VS. REBECCA BIONG, DOING BUSINESS UNDER THE NAME AND STYLE OF PONGKAY TRADING, RESPONDENT.

DECISION

BRION, J.:

Every case essentially turns on two basic questions: questions of fact and questions of law. Questions of fact are for the parties and their counsels to respond to, based on what supporting facts the legal questions require; the court can only draw conclusion from the facts or evidence adduced. When the facts are lacking because of the deficiency of presented evidence, then the court can only draw one conclusion: that the case must fail for lack of evidentiary support.

The present case is one such case as Dra. Leila A. dela Llana's (*petitioner*) petition for review on *certiorari*[1] challenging the February 11, 2008 decision[2] and the March 31, 2008 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 89163.

The Factual Antecedents

On March 30, 2000, at around 11:00 p.m., Juan dela Llana was driving a 1997 Toyota Corolla car along North Avenue, Quezon City.[4] His sister, Dra. dela Llana, was seated at the front passenger seat while a certain Calimlim was at the backseat.[5] Juan stopped the car across the Veterans Memorial Hospital when the signal light turned red. A few seconds after the car halted, a dump truck containing gravel and sand suddenly rammed the car's rear end, violently pushing the car forward. Due to the impact, the car's rear end collapsed and its rear windshield was shattered. Glass splinters flew, puncturing Dra. dela Llana. Apart from these minor wounds, Dra. dela Llana did not appear to have suffered from any other visible physical injuries.[6]

The traffic investigation report dated March 30, 2000 identified the truck driver as Joel Primero. It stated that Joel was recklessly imprudent in driving the truck.[7] Joel later revealed that his employer was respondent Rebecca Biong, doing business under the name and style of "Pongkay Trading" and was engaged in a gravel and sand business.[8]

In the first week of May 2000, Dra. dela Llana began to feel mild to moderate pain on the left side of her neck and shoulder. The pain became more intense as days passed by. Her injury became more severe. Her health deteriorated to the extent that she could no longer move her left arm. On June 9, 2000, she consulted with Dr. Rosalinda Milla, a rehabilitation medicine specialist, to examine her condition. Dr. Milla told her that she suffered from a whiplash injury, an injury caused by the

compression of the nerve running to her left arm and hand. Dr. Milla required her to undergo physical therapy to alleviate her condition.

Dra. dela Llana's condition did not improve despite three months of extensive physical therapy.[9] She then consulted other doctors, namely, Drs. Willie Lopez, Leonor Cabral-Lim and Eric Flores, in search for a cure. Dr. Flores, a neuro-surgeon, finally suggested that she undergo a cervical spine surgery to release the compression of her nerve. On October 19, 2000, Dr. Flores operated on her spine and neck, between the C5 and the C6 vertebrae.[10] The operation released the impingement of the nerve, but incapacitated Dra. dela Llana from the practice of her profession since June 2000 despite the surgery.[11]

Dra. dela Llana, on October 16, 2000, demanded from Rebecca compensation for her injuries, but Rebecca refused to pay.[12] Thus, on May 8, 2001, Dra. dela Llana sued Rebecca for damages before the Regional Trial Court of Quezon City (*RTC*). She alleged that she lost the mobility of her arm as a result of the vehicular accident and claimed P150,000.00 for her medical expenses (as of the filing of the complaint) and an average monthly income of P30,000.00 since June 2000. She further prayed for actual, moral, and exemplary damages as well as attorney's fees.[13]

In defense, Rebecca maintained that Dra. dela Llana had no cause of action against her as no reasonable relation existed between the vehicular accident and Dra. dela Llana's injury. She pointed out that Dra. dela Llana's illness became manifest one month and one week from the date of the vehicular accident. As a counterclaim, she demanded the payment of attorney's fees and costs of the suit.[14]

At the trial, Dra. dela Llana presented herself as an **ordinary witness**[15] and Joel as a hostile witness.[16] Dra. dela Llana reiterated that she lost the mobility of her arm because of the vehicular accident. To prove her claim, she identified and authenticated a **medical certificate dated November 20, 2000** issued by Dr. Milla. The medical certificate stated that Dra. dela Llana suffered from a whiplash injury. It also chronicled her clinical history and physical examinations.[17] Meanwhile, Joel testified that his truck hit the car because the truck's brakes got stuck.[18]

In defense, Rebecca testified that Dra. dela Llana was physically fit and strong when they met several days after the vehicular accident. She also asserted that she observed the diligence of a good father of a family in the selection and supervision of Joel. She pointed out that she required Joel to submit a certification of good moral character as well as barangay, police, and NBI clearances prior to his employment. She also stressed that she only hired Primero after he successfully passed the driving skills test conducted by Alberto Marcelo, a licensed driver-mechanic.[19]

Alberto also took the witness stand. He testified that he checked the truck in the morning of March 30, 2000. He affirmed that the truck was in good condition prior to the vehicular accident. He opined that the cause of the vehicular accident was a damaged compressor. According to him, the absence of air inside the tank damaged

the compressor. [20]

RTC Ruling

The RTC ruled in favor of Dra. dela Llana and held that the proximate cause of Dra. dela Llana's whiplash injury to be Joel's reckless driving.[21] It found that a whiplash injury is an injury caused by the sudden jerking of the spine in the neck area. It pointed out that the massive damage the car suffered only meant that the truck was over-speeding. It maintained that Joel should have driven at a slower pace because road visibility diminishes at night. He should have blown his horn and warned the car that his brake was stuck and could have prevented the collision by swerving the truck off the road. It also concluded that Joel was probably sleeping when the collision occurred as Joel had been driving for fifteen hours on that fateful day.

The RTC further declared that Joel's negligence gave rise to the presumption that Rebecca did not exercise the diligence of a good father of a family in Joel's selection and supervision of Joel. Rebecca was vicariously liable because she was the employer and she personally chose him to drive the truck. On the day of the collision, she ordered him to deliver gravel and sand to Muñoz Market, Quezon City. The Court concluded that the three elements necessary to establish Rebecca's liability were present: (1) that the employee was chosen by the employer, personally or through another; (2) that the services were to be rendered in accordance with orders which the employer had the authority to give at all times; and (3) that the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.

The RTC thus awarded Dra. dela Llana the amounts of P570,000.00 as actual damages, P250,000.00 as moral damages, and the cost of the suit.[22]

CA Ruling

In a decision dated February 11, 2008, the CA reversed the RTC ruling. It held that Dra. dela Llana failed to establish a reasonable connection between the vehicular accident and her whiplash injury by preponderance of evidence. Citing *Nutrimix Feeds Corp. v. Court of Appeals*,[23] it declared that courts will not hesitate to rule in favor of the other party if there is no evidence or the evidence is too slight to warrant an inference establishing the fact in issue. It noted that the interval between the date of the collision and the date when Dra. dela Llana began to suffer the symptoms of her illness was lengthy. It concluded that this interval raised doubts on whether Joel's reckless driving and the resulting collision in fact caused Dra. dela Llana's injury.

It also declared that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. It observed that Dra. dela Llana did not immediately visit a hospital to check if she sustained internal injuries after the accident. Moreover, her failure to present expert witnesses was fatal to her claim. It also gave no weight to the medical certificate. The medical certificate did not explain how and why the vehicular accident caused the injury.[24]

The Petition

Dra. dela Llana points out in her petition before this Court that *Nutrimix* is inapplicable in the present case. She stresses that *Nutrimix* involved the application of Article 1561 and 1566 of the Civil Code, provisions governing hidden defects. Furthermore, there was absolutely no evidence in *Nutrimix* that showed that poisonous animal feeds were sold to the respondents in that case.

As opposed to the respondents in *Nutrimix*, Dra. dela Llana asserts that she has established by preponderance of evidence that Joel's negligent act was the proximate cause of her whiplash injury. ***First***, pictures of her damaged car show that the collision was strong. She posits that it can be reasonably inferred from these pictures that the massive impact resulted in her whiplash injury. ***Second***, Dr. Milla categorically stated in the medical certificate that Dra. dela Llana suffered from whiplash injury. ***Third***, her testimony that the vehicular accident caused the injury is credible because she was a surgeon.

Dra. dela Llana further asserts that the medical certificate has probative value. Citing several cases, she posits that an uncorroborated medical certificate is credible if uncontroverted.[25] She points out that expert opinion is unnecessary if the opinion merely relates to matters of common knowledge. She maintains that a judge is qualified as an expert to determine the causation between Joel's reckless driving and her whiplash injury. Trial judges are aware of the fact that whiplash injuries are common in vehicular collisions.

The Respondent's Position

In her *Comment*,[26] Rebecca points out that Dra. dela Llana raises a factual issue which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. She maintains that the CA's findings of fact are final and conclusive. Moreover, she stresses that Dra. dela Llana's arguments are not substantial to merit this Court's consideration.

The Issue

The sole issue for our consideration in this case is whether Joel's reckless driving is the proximate cause of Dra. dela Llana's whiplash injury.

Our Ruling

We find the petition unmeritorious.

The Supreme Court may review questions of fact in a petition for review on certiorari when the findings of fact by the lower courts are conflicting

The issue before us involves a question of fact and this Court is not a trier of facts. As a general rule, the CA's findings of fact are final and conclusive and this Court will not review them on appeal. It is not the function of this Court to examine, review or evaluate the evidence in a petition for review on *certiorari* under Rule 45 of the Rules of Court. We can only review the presented evidence, by way of exception, when the conflict exists in findings of the RTC and the CA.[27] We see this exceptional situation here and thus accordingly examine the relevant evidence

presented before the trial court.

Dra. dela Llana failed to establish her case by preponderance of evidence

Article 2176 of the Civil Code provides that "[w]hoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is a quasi-delict." Under this provision, the elements necessary to establish a quasi-delict case are: (1) damages to the plaintiff; (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.**[28] These elements show that the source of obligation in a quasi-delict case is the breach or omission of mutual duties that civilized society imposes upon its members, or which arise from non-contractual relations of certain members of society to others.[29]

Based on these requisites, Dra. dela Llana must first establish by preponderance of evidence the three elements of quasi-delict before we determine Rebecca's liability as Joel's employer. She should show the chain of causation between Joel's reckless driving and her whiplash injury. *Only after she has laid this foundation can the presumption - that Rebecca did not exercise the diligence of a good father of a family in the selection and supervision of Joel - arise.* [30] Once negligence, the damages and the proximate causation are established, this Court can then proceed with the application and the interpretation of the fifth paragraph of Article 2180 of the Civil Code.[31] Under Article 2176 of the Civil Code, in relation with the fifth paragraph of Article 2180, "an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee."[32] The rationale for these graduated levels of analyses is that it is essentially the wrongful or negligent act or omission itself which creates the *vinculum juris* in extra-contractual obligations.[33]

In civil cases, a party who alleges a fact has the burden of proving it. **He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.**[34] *The reason for this rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof.* In short, mere allegations are not evidence.[35]

In the present case, the burden of proving the proximate causation between Joel's negligence and Dra. dela Llana's whiplash injury rests on Dra. dela Llana. She must establish by preponderance of evidence that Joel's negligence, in its natural and continuous sequence, unbroken by any efficient intervening cause, produced her whiplash injury, and without which her whiplash injury would not have occurred. [36]

Notably, Dra. dela Llana anchors her claim mainly on three pieces of evidence: (1) the pictures of her damaged car, (2) the medical certificate dated November 20, 2000, and (3) her testimonial evidence. However, none of these pieces of evidence show the causal relation between the vehicular accident and the whiplash injury. In other words, **Dra. dela Llana, during trial, did not adduce the *factum probans* or the evidentiary facts by which the *factum probandum* or the ultimate**