

## FIRST DIVISION

[ G.R. No. 157917, August 29, 2012 ]

**SPOUSES TEODORO<sup>[1]</sup> AND NANETTE PERENA, PETITIONERS,  
VS. SPOUSES NICOLAS AND TERESITA L. ZARATE, PHILIPPINE  
NATIONAL RAILWAYS, AND THE COURT OF APPEALS,  
RESPONDENTS.**

### D E C I S I O N

#### **BERSAMIN, J.:**

The operator of a school bus service is a common carrier in the eyes of the law. He is bound to observe extraordinary diligence in the conduct of his business. He is presumed to be negligent when death occurs to a passenger. His liability may include indemnity for loss of earning capacity even if the deceased passenger may only be an unemployed high school student at the time of the accident.

#### **The Case**

By petition for review on *certiorari*, Spouses Teodoro and Nanette Pereña (Pereñas) appeal the adverse decision promulgated on November 13, 2002, by which the Court of Appeals (CA) affirmed with modification the decision rendered on December 3, 1999 by the Regional Trial Court (RTC), Branch 260, in Parañaque City that had decreed them jointly and severally liable with Philippine National Railways (PNR), their co-defendant, to Spouses Nicolas and Teresita Zarate (Zarates) for the death of their 15-year old son, Aaron John L. Zarate (Aaron), then a high school student of Don Bosco Technical Institute (Don Bosco).

#### **Antecedents**

The Pereñas were engaged in the business of transporting students from their respective residences in Parañaque City to Don Bosco in Pasong Tamo, Makati City, and back. In their business, the Pereñas used a KIA Ceres Van (van) with Plate No. PYA 896, which had the capacity to transport 14 students at a time, two of whom would be seated in the front beside the driver, and the others in the rear, with six students on either side. They employed Clemente Alfaro (Alfaro) as driver of the van.

In June 1996, the Zarates contracted the Pereñas to transport Aaron to and from Don Bosco. On August 22, 1996, as on previous school days, the van picked Aaron up around 6:00 a.m. from the Zarates' residence. Aaron took his place on the left side of the van near the rear door. The van, with its air-conditioning unit turned on and the stereo playing loudly, ultimately carried all the 14 student riders on their way to Don Bosco. Considering that the students were due at Don Bosco by 7:15 a.m., and that they were already running late because of the heavy vehicular traffic on the South Superhighway, Alfaro took the van to an alternate route at about 6:45

a.m. by traversing the narrow path underneath the Magallanes Interchange that was then commonly used by Makati-bound vehicles as a short cut into Makati. At the time, the narrow path was marked by piles of construction materials and parked passenger jeepneys, and the railroad crossing in the narrow path had no railroad warning signs, or watchmen, or other responsible persons manning the crossing. In fact, the bamboo *barandilla* was up, leaving the railroad crossing open to traversing motorists.

At about the time the van was to traverse the railroad crossing, PNR Commuter No. 302 (train), operated by Jhonny Alano (Alano), was in the vicinity of the Magallanes Interchange travelling northbound. As the train neared the railroad crossing, Alfaro drove the van eastward across the railroad tracks, closely tailing a large passenger bus. His view of the oncoming train was blocked because he overtook the passenger bus on its left side. The train blew its horn to warn motorists of its approach. When the train was about 50 meters away from the passenger bus and the van, Alano applied the ordinary brakes of the train. He applied the emergency brakes only when he saw that a collision was imminent. The passenger bus successfully crossed the railroad tracks, but the van driven by Alfaro did not. The train hit the rear end of the van, and the impact threw nine of the 12 students in the rear, including Aaron, out of the van. Aaron landed in the path of the train, which dragged his body and severed his head, instantaneously killing him. Alano fled the scene on board the train, and did not wait for the police investigator to arrive.

Devastated by the early and unexpected death of Aaron, the Zarates commenced this action for damages against Alfaro, the Pereñas, PNR and Alano. The Pereñas and PNR filed their respective answers, with cross-claims against each other, but Alfaro could not be served with summons.

At the pre-trial, the parties stipulated on the facts and issues, *viz*:

A. FACTS:

- (1) That spouses Zarate were the legitimate parents of Aaron John L. Zarate;
- (2) Spouses Zarate engaged the services of spouses Pereña for the adequate and safe transportation carriage of the former spouses' son from their residence in Parañaque to his school at the Don Bosco Technical Institute in Makati City;
- (3) During the effectivity of the contract of carriage and in the implementation thereof, Aaron, the minor son of spouses Zarate died in connection with a vehicular/train collision which occurred while Aaron was riding the contracted carrier Kia Ceres van of spouses Pereña, then driven and operated by the latter's employee/authorized driver Clemente Alfaro, which van collided with the train of PNR, at around 6:45 A.M. of August 22, 1996, within the vicinity of the Magallanes Interchange in Makati City, Metro Manila, Philippines;
- (4) At the time of the vehicular/train collision, the subject site of the vehicular/train collision was a railroad crossing used by motorists for crossing the railroad tracks;
- (5) During the said time of the vehicular/train collision, there

- were no appropriate and safety warning signs and railings at the site commonly used for railroad crossing;
- (6) At the material time, countless number of Makati bound public utility and private vehicles used on a daily basis the site of the collision as an alternative route and short-cut to Makati;
  - (7) The train driver or operator left the scene of the incident on board the commuter train involved without waiting for the police investigator;
  - (8) The site commonly used for railroad crossing by motorists was not in fact intended by the railroad operator for railroad crossing at the time of the vehicular collision;
  - (9) PNR received the demand letter of the spouses Zarate;
  - (10) PNR refused to acknowledge any liability for the vehicular/train collision;
  - (12) The eventual closure of the railroad crossing alleged by PNR was an internal arrangement between the former and its project contractor; and
  - (11) The site of the vehicular/train collision was within the vicinity or less than 100 meters from the Magallanes station of PNR.

## B. ISSUES

- (1) Whether or not defendant-driver of the van is, in the performance of his functions, liable for negligence constituting the proximate cause of the vehicular collision, which resulted in the death of plaintiff spouses' son;
- (2) Whether or not the defendant spouses Pereña being the employer of defendant Alfaro are liable for any negligence which may be attributed to defendant Alfaro;
- (3) Whether or not defendant Philippine National Railways being the operator of the railroad system is liable for negligence in failing to provide adequate safety warning signs and railings in the area commonly used by motorists for railroad crossings, constituting the proximate cause of the vehicular collision which resulted in the death of the plaintiff spouses' son;
- (4) Whether or not defendant spouses Pereña are liable for breach of the contract of carriage with plaintiff-spouses in failing to provide adequate and safe transportation for the latter's son;
- (5) Whether or not defendants spouses are liable for actual, moral damages, exemplary damages, and attorney's fees;
- (6) Whether or not defendants spouses Teodorico and Nanette Pereña observed the diligence of employers and school bus operators;
- (7) Whether or not defendant-spouses are civilly liable for the accidental death of Aaron John Zarate;
- (8) Whether or not defendant PNR was grossly negligent in operating the commuter train involved in the accident, in allowing or tolerating the motoring public to cross, and its

- failure to install safety devices or equipment at the site of the accident for the protection of the public;
- (9) Whether or not defendant PNR should be made to reimburse defendant spouses for any and whatever amount the latter may be held answerable or which they may be ordered to pay in favor of plaintiffs by reason of the action;
  - (10) Whether or not defendant PNR should pay plaintiffs directly and fully on the amounts claimed by the latter in their Complaint by reason of its gross negligence;
  - (11) Whether or not defendant PNR is liable to defendants spouses for actual, moral and exemplary damages and attorney's fees.<sup>[2]</sup>

The Zarates' claim against the Pereñas was upon breach of the contract of carriage for the safe transport of Aaron; but that against PNR was based on quasi-delict under Article 2176, *Civil Code*.

In their defense, the Pereñas adduced evidence to show that they had exercised the diligence of a good father of the family in the selection and supervision of Alfaro, by making sure that Alfaro had been issued a driver's license and had not been involved in any vehicular accident prior to the collision; that their own son had taken the van daily; and that Teodoro Pereña had sometimes accompanied Alfaro in the van's trips transporting the students to school.

For its part, PNR tended to show that the proximate cause of the collision had been the reckless crossing of the van whose driver had not first stopped, looked and listened; and that the narrow path traversed by the van had not been intended to be a railroad crossing for motorists.

### **Ruling of the RTC**

On December 3, 1999, the RTC rendered its decision,<sup>[3]</sup> disposing:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering them to jointly and severally pay the plaintiffs as follows:

- (1) (for) the death of Aaron-Php50,000.00;
- (2) Actual damages in the amount of Php100,000.00;
- (3) For the loss of earning capacity-Php2,109,071.00;
- (4) Moral damages in the amount of (Php)4,000,000.00;
- (5) Exemplary damages in the amount of Php1,000,000.00;
- (6) Attorney's fees in the amount of Php200,000.00; and
- (7) Cost of suit.

SO ORDERED.

On June 29, 2000, the RTC denied the Pereñas' motion for reconsideration,<sup>[4]</sup> reiterating that the cooperative gross negligence of the Pereñas and PNR had caused the collision that led to the death of Aaron; and that the damages awarded to the

Zarates were not excessive, but based on the established circumstances.

### **The CA's Ruling**

Both the Pereñas and PNR appealed (C.A.-G.R. CV No. 68916). PNR assigned the following errors, to wit:<sup>[5]</sup>

The Court *a quo* erred in:

1. In finding the defendant-appellant Philippine National Railways jointly and severally liable together with defendant-appellants spouses Teodorico and Nanette Pereña and defendant-appellant Clemente Alfaro to pay plaintiffs-appellees for the death of Aaron Zarate and damages.
2. In giving full faith and merit to the oral testimonies of plaintiffs-appellees witnesses despite overwhelming documentary evidence on record, supporting the case of defendants-appellants Philippine National Railways.

The Pereñas ascribed the following errors to the RTC, namely:

The trial court erred in finding defendants-appellants jointly and severally liable for actual, moral and exemplary damages and attorney's fees with the other defendants.

The trial court erred in dismissing the cross-claim of the appellants Pereñas against the Philippine National Railways and in not holding the latter and its train driver primarily responsible for the incident.

The trial court erred in awarding excessive damages and attorney's fees.

The trial court erred in awarding damages in the form of deceased's loss of earning capacity in the absence of sufficient basis for such an award.

On November 13, 2002, the CA promulgated its decision, affirming the findings of the RTC, but limited the moral damages to P2,500,000.00; and deleted the attorney's fees because the RTC did not state the factual and legal bases, to wit:<sup>[6]</sup>

**WHEREFORE**, premises considered, the assailed Decision of the Regional Trial Court, Branch 260 of Parañaque City is **AFFIRMED** with the **modification** that the award of **Actual Damages** is reduced to **P59,502.76**; **Moral Damages** is reduced to **P2,500,000.00**; and the award for Attorney's Fees is Deleted.

**SO ORDERED.**