

THIRD DIVISION

[G.R. No. 175172, September 29, 2009]

CRESENCIA ACHEVARA, ALFREDO ACHEVARA, AND BENIGNO VALDEZ, PETITIONERS, VS. ELVIRA RAMOS, JOHN ARNEL RAMOS, AND KHRISTINE CAMILLE RAMOS, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*^[1] of the Decision dated April 25, 2006 of the Court of Appeals in CA-G.R. CV No. 67027, and its Resolution dated October 23, 2006, denying petitioners' motion for reconsideration. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court (RTC) of Ilocos Sur, Branch 22, dated February 14, 2000, holding petitioners solidarily liable to respondents for damages incurred due to a vehicular accident, which resulted in the death of Arnulfo Ramos.

The facts are as follows:

On June 27, 1995, respondents Elvira Ramos and her two minor children, namely, John Arnel Ramos and Khristine Camille Ramos, filed with the RTC of Ilocos Sur a Complaint^[2] for damages under Article 2176^[3] of the Civil Code against petitioners Cresencia Acevara, Alfredo Acevara and Benigno Valdez for the death of Arnulfo Ramos, husband of Elvira Ramos and father of her two children, in a vehicular accident that happened on April 22, 1995 at the national highway along *Barangay* Tablac, Candon, Ilocos Sur. Crescencia Acevara was sued as the operator of the passenger jeep with Plate No. DKK-995, which was involved in the vehicular accident. Alfredo Acevara was impleaded as the husband of the operator and as the administrator of the conjugal partnership properties of the Spouses Acevara.

In their Complaint,^[4] respondents alleged that in the morning of April 22, 1995, Benigno Valdez was driving a passenger jeep heading north on the national highway in *Barangay* Tablac, Candon, Ilocos Sur in a reckless, careless, and negligent manner. He tried to overtake a motorcycle, causing the passenger jeep to encroach on the opposite lane and bump the oncoming vehicle driven by Arnulfo Ramos. The injuries sustained by Arnulfo Ramos caused his death, notwithstanding prompt medical assistance. Respondents alleged that Crescencia Acevara failed to exercise due diligence in the selection and supervision of Benigno Valdez as driver of the passenger jeep. Respondents sought to recover actual damages for medical expenses in the sum of P33,513.00 and funeral expenses in the sum of P30,000.00, as well as moral and exemplary damages, lost earnings, attorney's fees and litigation expenses.

In their Answer,^[5] petitioners denied respondents' allegation that Benigno Valdez overtook a motorcycle and bumped the vehicle driven by Arnulfo Ramos. They

alleged that on April 22, 1995, Benigno Valdez was driving southward at a moderate speed when he saw an owner-type jeep coming from the south and heading north, running in a zigzag manner, and encroaching on the west lane of the road. To avoid a collision, Valdez drove the passenger jeep towards the shoulder of the road, west of his lane, but the owner-type jeep continued to move toward the western lane and bumped the left side of the passenger jeep. Petitioners alleged that it was Arnulfo Ramos who was careless and negligent in driving a motor vehicle, which he very well knew had a mechanical defect. Hence, respondents had no cause of action against petitioners.

During trial on the merits, respondents presented three witnesses: Alfredo Gamera, Dr. Emilio Joven and Elvira Ramos.

Alfredo Gamera testified that at about 10:00 a.m. of April 22, 1995, he and his wife were seated at the waiting shed along the national highway in Tablac, Candon, Ilocos Sur, waiting for a ride to the town proper of Candon. He saw a motorcycle, driven by Police Officer 3 (PO3) Baltazar de Peralta, coming from the interior part of Tablac and proceeding south toward the town proper. He also saw a southbound passenger jeep, driven by Benigno Valdez, that wanted to overtake the motorcycle of PO3 De Peralta. As it tried to overtake the motorcycle, the passenger jeep encroached on the lane of the northbound owner-type jeep driven by Arnulfo Ramos, which resulted in the collision. Gamera stated that the point of impact was on the lane of the vehicle of Arnulfo Ramos. Thereafter, the passenger jeep screeched to a halt at the fence of the Funtanilla family. The owner-type jeep was destroyed and the windshield was broken.^[6]

Gamera testified that he was about 100 meters from the place where the vehicular accident occurred. The speed of the passenger jeep was about 70 kilometers per hour, while that of the owner-type jeep was about 30 kilometers per hour.^[7]

On cross-examination, it was found that Gamera went to the Police Station in Candon, Ilocos Sur to execute his sworn statement only on May 30, 1992, one month after the incident and after respondent Elvira Ramos talked to him. Moreover, at the preliminary investigation, Gamera did not mention in his sworn statement that his wife was present during the incident, which fact was admitted by respondent's counsel. Further, at that time, Gamera was working as a *jueteng* collector at the same joint where the deceased Arnulfo Ramos was also employed, and he had known Ramos for five years.^[8]

Dr. Emilio Joven, a surgeon of the Lorma Medical Center, San Fernando, La Union, testified that Arnulfo Ramos was admitted at the Lorma Hospital at about 12:50 p.m. on April 22, 1995. The latter sustained external injuries, mostly on the left side of the body, which could have been caused by a vehicular accident. The CT scan result of Arnulfo Ramos showed blood clots inside the brain, scattered small hemorrhagic contusions, and swelling and blood clots on the base of the brain, which internal injuries caused his death.^[9] The immediate cause of death was "acute cranio-cerebral injury."^[10]

Respondent Elvira Ramos testified on the damages she incurred due to the vehicular accident, which resulted in the death of her husband. She spent P33,513.00 for hospitalization and P30,000.00 for the funeral. She prayed for the award of lost

earnings, moral damages, exemplary damages, attorney's fees, appearance fees and other costs of litigation.^[11]

She also testified that the owner-type jeep was registered in the name of Matilde Tacad^[12] of Sto. Domingo, Ilocos Sur.^[13]

Petitioners presented six witnesses, namely, PO3 Baltazar de Peralta, Special Police Officer 2 (SPO2) Marvin Valdez, Herminigildo Pagaduan, Benigno Valdez, Emilia Achevara and Alfredo Achevara.

PO3 Baltazar de Peralta stated that he was assigned to Santiago, Ilocos Sur. He testified that at about 9:00 a.m. of April 22, 1995, he was on board his motorcycle at the waiting shed erected on the eastern side of the national highway in Tablac, Ilocos Sur. He was about to go southward, but waited a while to let a southbound passenger jeep pass by. Then he followed behind the passenger jeep.

When the passenger jeep was about 75 meters away from him on the western lane of the national highway, PO3 De Peralta spotted an owner-type jeep coming from the south on the eastern lane of the road. He observed that the owner-type jeep was running in a zigzag manner as it went over the many holes on the road. It did not slacken speed, causing the jeep's front wheels to wiggle, before it bumped the passenger jeep coming from the north. The collision occurred on the lane of the passenger jeep, about two feet away from the center line of the road, causing the owner-type jeep to turn around and return to its former position, with its right wheel removed; while the passenger jeep veered to the right lane.^[14]

After the collision, PO3 De Peralta assisted the owner-type jeep's driver, who fell to the ground, and helped load him into a tricycle that would take him to the hospital. Then he went to the driver of the passenger jeep and asked him what happened. The driver remarked, "Even if you do not like to meet an accident, if that is what happened, you cannot do anything." Thereafter, PO3 De Peralta proceeded on his way southward. He reported the incident at the Police Station of Candon, Ilocos Sur.^[15]

PO3 De Peralta testified that the accident happened on a straight part of the highway, but there were many holes on the eastern lane. He stated that nothing impeded his view of the incident.^[16]

PO3 De Peralta also testified that he had known respondents' witness, Alfredo Gamera, who was his *barangay* mate for 20 years. He declared that he never saw Gamera at the waiting shed or at the scene of the incident on the morning of April 22, 1995.^[17]

Investigator SPO2 Marvin Valdez of the Candon Police Station testified that at about 11:00 a.m. of April 22, 1995, he received a report of the vehicular accident that occurred at the national highway in Tablac, Candon, Ilocos Sur, which was three kilometers from the police station. He proceeded to the site with some companions. He saw a passenger jeep positioned diagonally on the western shoulder of the road facing southwest, while an owner-type jeep was on the right lane. The driver of the owner-type jeep was seriously injured and was brought to the hospital.^[18]

SPO2 Valdez testified that the owner-type jeep's right tire was detached, and its left front portion was damaged, while the passenger jeep's left tire was detached, and its left side portion was damaged.^[19]

Herminigildo Pagaduan testified that at 7:00 a.m. of April 22, 1995, he was at the house of *Barangay* Captain Victorino Gacusan of San Antonio, Candon, Ilocos Sur. Gacusan was then the overall monitor of the *jueteng* joint operation in Candon, Ilocos Sur. Pagaduan and Gacusan had earlier agreed to attend the wake of an army captain at Tamorong, Candon, Ilocos Sur that morning. While Pagaduan was waiting for *Barangay* Captain Gacusan, the latter made a phone call requesting for a vehicle to take them to Tamorong. Not long after, a yellow owner-type jeep arrived, which was driven by Arnulfo Ramos, an employee of the *jueteng* joint. All of them rode the jeep with Plate No. ACG 713. *Barangay* Captain Gacusan was on the driver's seat, Pagaduan sat beside Gacusan, while Arnulfo Ramos and the others sat on the rear seat.^[20]

Pagaduan further testified that the group headed west to Tamorong via Darapidap. When they reached a bridge, *Barangay* Captain Gacusan tried to increase the speed of the jeep, but it suddenly wiggled. Gacusan stopped the jeep, and they all alighted from it. Gacusan told Arnulfo Ramos to have the mechanical defect repaired at the auto shop. Hence, they did not proceed to Tamorong, but returned to the house of Gacusan by tricycle. The next day, he heard from Gacusan that the jeep they had used in their aborted trip to Tamorong met an accident.^[21]

On cross-examination, Pagaduan testified that it was defense counsel Atty. Tudayan who requested him to testify, because Atty. Tudayan had heard him discuss the incident with some *jueteng* employees.^[22]

Petitioner Benigno Valdez testified that on April 22, 1995, he was driving the passenger jeep of his aunt, Crescencia Acevara, on the national highway in Tablac, Candon, Ilocos Sur heading south, while the owner-type jeep of Arnulfo Ramos was heading north. Valdez stated that the owner-type jeep was wiggling and running fast in a zigzag manner, when its right front wheel got detached and the owner-type jeep bumped the left side of his passenger jeep. Valdez swerved the passenger jeep to the western edge of the road to avoid a collision, but to no avail, as it bumped a post. He passed out. When he regained consciousness, he saw the driver of the owner-type jeep being rescued.^[23]

Valdez surrendered himself to the Police Station in Candon, Ilocos Sur. He informed the police that his vehicle was bumped by the owner-type jeep driven by Arnulfo Ramos, and he showed his driver's license to the police.^[24]

Valdez branded as false the testimony of respondents' witness, Alfredo Gamera, that the former tried to overtake the motorcycle of PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Valdez testified that before the vehicular accident, he saw a policeman following him, but there was a tricycle between them. He denied that he was driving fast and stated that his speed at that time registered only 20 on the speedometer.^[25]

Petitioner Alfredo Acevara testified that Crescencia Acevara was his wife, while

Benigno Valdez was the nephew of his wife. He and his wife owned the passenger jeep with Plate No. DKK-995 that was involved in the vehicular accident. Valdez had been the driver of the vehicle since 1992, although he drove it only during daytime.

[26]

Alfredo Acevara declared that before they employed Benigno Valdez to drive the passenger jeep, the former exercised the diligence of a good father of a family in selecting, training and supervising the latter.^[27] They required Valdez to show them his professional driver's license, and investigated his personal background and training/experience as a driver. For his apprenticeship, they required him to drive from Metro Manila to Tagaytay City, and then back to Metro Manila for a day.

Acevara stated that he knew Benigno Valdez since 1988. As their driver since 1992, Valdez never committed any traffic violation. On April 22, 1995, he handed the key of the jeep to Valdez at about 7:30 a.m. at their *barangay* in Padoil, Sta. Cruz, Ilocos Sur to fetch the sound system in Santiago, Ilocos Sur for their fiesta. He told Valdez to avoid an accident, bring his license and avoid being hot-tempered.

[28]

On February 14, 2000, the RTC of Narvacan, Ilocos Sur, Branch 22, rendered a Decision in Civil Case No. 1431-N in favor of respondents.

The trial court found that the testimony of respondents' witness, Alfredo Gamera, was controverted by the testimony of PO3 Baltazar de Peralta and the finding of police investigator SPO2 Marvin Valdez. Gamera testified that the vehicular accident occurred because the passenger jeep tried to overtake the motorcycle driven by PO3 Baltazar de Peralta and encroached on the lane of the owner-type jeep driven by Arnulfo Ramos. Gamera's testimony was, however, refuted by PO3 Baltazar de Peralta, who testified that the passenger jeep did not overtake his motorcycle since he was the one following behind the passenger jeep. Hence, the trial court concluded that the passenger jeep did not encroach on the lane of the owner-type jeep on the left side of the road to allegedly overtake the motorcycle.

Moreover, Gamera testified that the collision occurred on the lane of the owner-type jeep, and one of the wheels of the owner-type jeep was detached, so that it stayed immobile at the place of collision, about two meters east from the center line of the national highway. However, SPO2 Marvin Valdez, who investigated the incident, found both vehicles on the western lane of the national highway. Thus, the trial court stated that it was undeniable that the collision took place on the western lane of the national highway, which was the passenger jeep's lane.

The trial court held that, as contended by respondents, the doctrine of last clear chance was applicable to this case. It cited *Picart v. Smith*,^[29] which applied the said doctrine, thus, where both parties are guilty of negligence, but the negligent act of one succeeds that of the other by an appreciable interval of time, the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.

The trial court held that the driver of the passenger jeep, Benigno Valdez, having seen the risk exhibited by the wiggling of the front wheels of the owner-type jeep,