

THIRD DIVISION

[G.R. No. 165969, November 27, 2008]

NATIONAL POWER CORPORATION, PETITIONER, VS. HEIRS OF NOBLE CASIONAN, RESPONDENTS.

D E C I S I O N

REYES, R.T., J.:

PETITIONING power company pleads for mitigation of awarded damages on ground of contributory negligence. But is the victim in this case partly to blame for his electrocution and eventual demise?

This is a review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) which found the National Power Corporation (NPC) liable for damages for the death of Noble Casionan due to electrocution from the company's high tension transmission lines.

The Facts

The facts, as found by the trial court are as follows:

Respondents are the parents of Noble Casionan, 19 years old at the time of the incident that claimed his life on June 27, 1995. He would have turned 20 years of age on November 9 of that year. Noble was originally from Cervantes, Ilocos Sur. He worked as a pocket miner in Dalicno, Ampucao, Itogon, Benguet.

A trail leading to Sangilo, Itogon, existed in Dalicno and this trail was regularly used by members of the community. Sometime in the 1970's, petitioner NPC installed high-tension electrical transmission lines of 69 kilovolts (KV) traversing the trail. Eventually, some of the transmission lines sagged and dangled reducing their distance from the ground to only about eight to ten feet. This posed a great threat to passersby who were exposed to the danger of electrocution especially during the wet season.

As early as 1991, the leaders of Ampucao, Itogon made verbal and written requests for NPC to institute safety measures to protect users of the trail from their high tension wires. On June 18, 1991 and February 11, 1993, Pablo and Pedro Ngaosie, elders of the community, wrote Engr. Paterno Banayot, Area Manager of NPC, to make immediate and appropriate repairs of the high tension wires. They reiterated the danger it posed to small-scale miners especially during the wet season. They related an incident where one boy was nearly electrocuted.

In a letter dated March 1, 1995, Engr. Banayot informed Itogon Mayor Cresencio Pacalso that NPC had installed nine additional poles on their Beckel-Philex 60 KV line. They likewise identified a possible rerouting scheme with an estimated total

cost of 1.7 million pesos to improve the distance from its deteriorating lines to the ground.

On June 27, 1995, Noble and his co-pocket miner, Melchor Jimenez, were at Dalicno. They cut two bamboo poles for their pocket mining. One was 18 to 19 feet long and the other was 14 feet long. Each man carried one pole horizontally on his shoulder: Noble carried the shorter pole while Melchor carried the longer pole. Noble walked ahead as both passed through the trail underneath the NPC high tension transmission lines on their way to their work place.

As Noble was going uphill and turning left on a curve, the tip of the bamboo pole he was carrying touched one of the dangling high tension wires. Melchor, who was walking behind him, narrated that he heard a buzzing sound when the tip of Noble's pole touched the wire for only about one or two seconds. Thereafter, he saw Noble fall to the ground. Melchor rushed to Noble and shook him but the latter was already dead. Their co-workers heard Melchor's shout for help and together they brought the body of Noble to their camp.

A post-mortem examination by Dra. Ignacia Reyes Ciriaco, Municipal Health Officer of Itogon, Benguet, determined the cause of death to be cardiac arrest, secondary to ventricular fibulation, secondary to electrocution.^[2] She also observed a small burned area in the middle right finger of the victim.

Police investigators who visited the site of the incident confirmed that portions of the high tension wires above the trail hung very low, just about eight to ten feet above the ground. They noted that the residents, school children, and pocket miners usually used the trail and had to pass directly underneath the wires. The trail was the only viable way since the other side was a precipice. In addition, they did not see any danger warning signs installed in the trail.

The elders and leaders of the community, through Mayor Cresencio Pacalso, informed the General Manager of NPC in Itogon of the incident. After learning of the electrocution, NPC repaired the dangling and sagging transmission lines and put up warning signs around the area.

Consequently, the heirs of the deceased Noble filed a claim for damages against the NPC before the Regional Trial Court (RTC) in Benguet. In its answer, NPC denied being negligent in maintaining the safety of the high tension transmission lines. It averred that there were danger and warning signs installed but these were stolen by children. Excavations were also made to increase the necessary clearance from the ground to about 17 to 18 feet but some towers or poles sank due to pocket mining in the area.

At the trial, NPC witnesses testified that the cause of death could not have been electrocution because the victim did not suffer extensive burns despite the strong 69 KV carried by the transmission lines. NPC argued that if Noble did die by electrocution, it was due to his own negligence. The company counter-claimed for attorney's fees and cost of litigation.

RTC Disposition

On February 17, 1998, the RTC decided in favor of respondents. The *fallo* of its

decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant NPC as follows:

1. Declaring defendant NPC guilty of Negligence (Quasi-Delict) in connection with the death of Noble Casionan;
2. Ordering NPC as a consequence of its negligence, to pay the plaintiffs Jose and Linda Casionan, as heirs of the deceased, Noble Casionan, the following Damages:
 - a. P50,000.00 as indemnity for the death of their son Noble Casionan;
 - b. P100,000.00 as moral damages;
 - c. P50,000.00 as exemplary damages;
 - d. P52,277.50 as actual damages incurred for the expenses of burial and wake in connection with the death of Noble Casionan;
 - e. P720,000.00 as the loss of unearned income; and
 - f. P20,000.00 as attorney's fees and the cost of suit; and
3. Dismissing the counter claim of the NPC for lack of merit.^[3]

The RTC gave more credence to the testimony of witnesses for respondents than those of NPC who were not actually present at the time of the incident. The trial court observed that witnesses for NPC were biased witnesses because they were all employed by the company, except for the witness from the Department of Environment and Natural Resources (DENR). The RTC found:

Melchor Jimenez was very vivid in his account. He declared that he and Noble Casionan cut two bamboo poles, one 14 feet and the other about 18 feet. The shorter bamboo pole was carried by Noble Casionan and the longer bamboo pole was carried by him. And they walked along the trail underneath the transmission lines. He was following Noble Casionan. And when they were going uphill in the trail and Noble Casionan was to turn left in a curve, the bamboo pole of Casionan swung around and its tip at the back touched for one or two seconds or for a split moment the transmission line that was dangling and a buzzing sound was heard. *And Casionan immediately fell dead and simply stopped breathing. What better account would there be than this? Melchor Jimenez was an eye witness as to how it all happened.*^[4] (Emphasis added)

The RTC ruled that the negligence of NPC in maintaining the high-tension wires was established by preponderance of evidence. On this score, the RTC opined:

2. On the matter of whether plaintiffs have a cause of action against defendant NPC, obviously, they would have. x x x *This negligence of*

the NPC was well established and cannot be denied because previous to this incident, the attention of NPC has already been called by several requests and demands in 1991, 1993 and 1995 by elders and leaders of the community in the area to the fact that their transmission lines were dangling and sagging and the clearance thereof from the line to the ground was only 8 to 10 feet and not within the standard clearance of 18 to 20 feet but no safety measures were taken. They did not even put danger and warning signs so as to warn persons passing underneath.^[5] (Emphasis added)

Disagreeing with the ruling of the trial court, NPC elevated the case to the CA. In its appeal, it argued that the RTC erred in ruling that NPC was liable for Noble's death. Further, even assuming that Noble died of electrocution, the RTC erred in not finding that he was guilty of contributory negligence and in awarding excessive damages.

CA Disposition

On June 30, 2004, the CA promulgated its decision, disposing as follows:

WHEREFORE, the appealed Decision is hereby AFFIRMED, with the MODIFICATION that the amount of moral damages is REDUCED to Fifty Thousand Pesos (P50,000.00); and the award of attorney's fees in the sum of Twenty Thousand Pesos (P20,000.00) is DELETED.^[6]

The CA sustained the findings of fact of the trial court but reduced the award of moral damages from P100,000.00 to P50,000.00. The CA further disallowed the award of attorney's fees because the reason for the award was not expressly stated in the body of the decision.

Issues

The following issues are presented for Our consideration: (i) Whether the award for damages should be deleted in view of the contributory negligence of the victim; and (ii) Whether the award for unearned income, exemplary, and moral damages should be deleted for lack of factual and legal bases.^[7]

Our Ruling

I

That the victim Noble died from being electrocuted by the high-tension transmission wires of petitioner is not contested by petitioner. We are, however, asked to delete or mitigate the damages awarded by the trial and appellate courts in view of what petitioner alleges to be contributory negligence on the part of the victim.

As a rule, only questions of law may be entertained on appeal by *certiorari* under Rule 45. The finding of negligence on the part of petitioner by the trial court and affirmed by the CA is a question of fact which We cannot pass upon since it would entail going into factual matters on which the finding of negligence was based.^[8] Corollary to this, the finding by both courts of the lack of contributory negligence on the part of the victim is a factual issue which is deemed conclusive upon this Court

absent any compelling reason for Us to rule otherwise.

But even if We walk the extra mile, the finding of liability on the part of petitioner must stay.

Petitioner contends that the mere presence of the high tension wires above the trail did not cause the victim's death. Instead, it was Noble's negligent carrying of the bamboo pole that caused his death. It insists that Noble was negligent when he allowed the bamboo pole he was carrying to touch the high tension wires. This is especially true because other people traversing the trail have not been similarly electrocuted.

Petitioner's contentions are absurd.

The sagging high tension wires were an accident waiting to happen. As established during trial, the lines were sagging around 8 to 10 feet in violation of the required distance of 18 to 20 feet. If the transmission lines were properly maintained by petitioner, the bamboo pole carried by Noble would not have touched the wires. He would not have been electrocuted.

Petitioner cannot excuse itself from its failure to properly maintain the wires by attributing negligence to the victim. In *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*,^[9] this Court held that the responsibility of maintaining the rails for the purpose of preventing derailment accidents belonged to the company. The company should not have been negligent in ascertaining that the rails were fully connected than to wait until a life was lost due to an accident. Said the Court:

In this petition, the respondent court is faulted for finding the petitioner guilty of negligence notwithstanding its defense of due diligence under Article 2176 of the Civil Code and for disallowing the deductions made by the trial court.

Investigation of the accident revealed that the derailment of the locomotive was caused by protruding rails which had come loose because they were not connected and fixed in place by fish plates. Fish plates are described as strips of iron 8" to 12" long and 3 ½" thick which are attached to the rails by 4 bolts, two on each side, to keep the rails aligned. Although they could be removed only with special equipment, the fish plates that should have kept the rails aligned could not be found at the scene of the accident.

There is no question that the maintenance of the rails, for the purpose, inter alia, of preventing derailments, was the responsibility of the petitioner, and that this responsibility was not discharged. According to Jose Reyes, its own witness, who was in charge of the control and supervision of its train operations, cases of derailment in the milling district were frequent and there were even times when such derailments were reported every hour. The petitioner should therefore have taken more prudent steps to prevent such accidents instead of waiting until a life was finally lost because of its negligence.^[10]