

FIRST DIVISION

[G.R. NO. 160709, February 23, 2005]

**NELLEN LAMBERT, ASSISTED BY HER HUSBAND, GLENROY
ALOYSUIS LAMBERT, PETITIONERS, VS. HEIRS OF RAY
CASTILLON, REPRESENTED BY MARILOU T. CASTILLON AND
SERGIO LABANG, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision^[1] of the Court of Appeals dated October 21, 2002 in CA-G.R. CV No. 43734, which affirmed the June 29, 1993 decision of the Regional Trial Court of Iligan City, Branch 06, in Civil Case No. 06-2086.

In the evening of January 13, 1991, Ray Castillon visited the house of his brother Joel Castillon at Tambo, Iligan City and borrowed his motorcycle. He then invited his friend, Sergio Labang, to roam around Iligan City. Ray drove the motorcycle with Sergio as the backrider.^[2]

At around past 10:00 p.m., after eating supper at Hona's Restaurant and imbibing a bottle of beer, they traversed the highway towards Tambo at a high speed. Upon reaching Brgy. Sto. Rosario, they figured in an accident with a Tamaraw jeepney, owned by petitioner Nelen Lambert and driven by Reynaldo Gamot, which was traveling on the same direction but made a sudden left turn. The incident resulted in the instantaneous death of Ray and injuries to Sergio.^[3]

Respondents, the heirs of Ray Castillon, thus filed an action for damages with prayer for preliminary attachment against the petitioner Nelen Lambert. The complaint was docketed as Civil Case No. 06-2086 of the RTC of Iligan City, Branch 06.^[4] The complaint was subsequently amended to include the claim by Joel Castillon for the damages caused to the motorcycle.^[5]

On June 29, 1993, after a full-blown trial, the court *a quo* rendered a decision in favor of herein private respondents but reduced petitioner's liability by 20% in view of the contributory negligence of Ray. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, directing the latter, jointly and severally, to pay the former the following:

1. The sum of SIX HUNDRED THIRTY-THREE THOUSAND AND NINETY-ONE (P633,091) PESOS, representing loss of support, death indemnity, funeral and related expenses, moral damages and attorney's fees and

2. Costs of the suit.

For lack of merit, defendants' counterclaim is dismissed.

On the claim of Joel Castillon, the evidence shows that he is not the real owner of the motorcycle. He is not the real party in interest. Accordingly, his complaint is dismissed.

On the third-party complaint, the third-party defendant Zenith Insurance Corporation is ordered to pay the sum of P16,500.00 directly to the plaintiffs. This sum, if paid, should be deducted from the amount adjudged in par. 1 above.

SO ORDERED.^[6]

The Court of Appeals affirmed the decision of the trial court.^[7] Hence the present petition, based on the following arguments:

1. The Honorable Court of Appeals committed serious error of law and grave abuse of discretion when it did not apply the ruling of this Honorable Court in the case of *Philippine Rabbit Bus Lines vs. The Honorable Intermediate Appellate Court and Casiano Pascua, Et. Al.*, [189 SCRA 168, August 30, 1990], as reiterated recently in the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999], in which this Honorable Court enunciated that drivers of vehicles "who bump the rear of another vehicle" are presumed to be the cause of the accident.
2. The erroneous conclusion of the Honorable Trial Court as affirmed by the Honorable Court of Appeals that the act of tailgating, at high speed, constitutes contributory negligence only, is contrary to the rulings of this Honorable Court in the case of *Sanitary Steam Laundry, INC. vs. The Honorable Court of Appeals* [300 SCRA 20, December 10, 1998] and the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999].
3. The Honorable Court of Appeals grossly erred in its conclusion that petitioner's driver was negligent, without taking into consideration the presumptions enunciated by this Honorable Court in the case of *Philippine Rabbit Bus Lines vs. The Honorable Intermediate Appellate Court and Casiano Pascua, Et. Al.*, [189 SCRA 168, August 30, 1990], and the case of *Edna A. Raynera vs. Freddie Hiceta and Jimmy Orpilla* [306 SCRA 102, April 21, 1999].
4. As an alternative relief, petitioner most respectfully assigns as error the Honorable Trial Court's computation as to the loss of earning capacity of Ray Castillon. Such computation is contrary to the formula enunciated by this Honorable Court in the case of *Villa Rey Transit, Inc. vs. The Honorable Court of Appeals* [31 SCRA 511 (1970)].
5. The Honorable Trial Court's award of moral damages is contrary to the pronouncement of this Honorable Court in the case of *Ace Haulers Corporation vs. The Honorable Court of Appeals and Abiva* [338 SCRA 572, August 23,

2000], wherein the award of moral damages was disallowed absent any evidence of bad faith or ill-motive.^[8]

Petitioner insists that the negligence of Ray Castillon was the proximate cause of his unfortunate death and therefore she is not liable for damages.

In petitions for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be put into issue. Questions of fact cannot be entertained. The finding of negligence by the Court of Appeals is a question of fact which we cannot pass upon as it would entail going into factual matters on which the finding of negligence was based. As a rule, factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record.^[9]

Our examination of the records shows that both the trial court and the Court of Appeals carefully considered the factual backdrop of the case. No cogent reason exists for disturbing the following findings of the trial court, which the Court of Appeals affirmed:

... To the mind of the court, this is exactly what happened. When Reynaldo Gamot was approaching the side road, he slightly veered to the right for his allowance. Ray Castillon, who was following closely behind, instinctively veered to the left but it was also the moment when Reynaldo Gamot sharply turned to the left towards the side road. At this juncture both were moving obliquely to the left. Thus the motorcycle sliced into the side of the jeepney throwing the driver forward so that his forehead hit the angle bar on the left front door of the jeepney even as the motorcycle shot forward and the jeepney veered back to the right and sped away....

The testimonies of the witnesses Frias, Opada, Labang and Sumile show that he did not stop even for a second, or less before making the left turn. On the contrary, he slightly veered to the right immediately followed by the abrupt and sudden turn to the left in order to enter the side road. It is apparent that Reynaldo Gamot did not keep a lookout for vehicles or persons following him before proceeding to turn left. He failed to take into account the possibility that others may be following him. He did not employ the necessary precaution to see to it that the road was clear.^[10]

Clearly, the abrupt and sudden left turn by Reynaldo, without first establishing his right of way, was the proximate cause of the mishap which claimed the life of Ray and injured Sergio. Proximate cause is defined as that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred.^[11] The cause of the collision is traceable to the negligent act of Reynaldo for, as the trial court correctly held, *without that left turn executed with no precaution, the mishap in all probability would not have happened.*^[12]

Petitioner misunderstood our ruling in *Raynera v. Hiceta*.^[13] That case also involved a motorcycle crashing into the left rear portion of another vehicle, and we declared

therein that drivers of vehicles “who bump the rear of another vehicle” are presumed to be “the cause of the accident, ***unless contradicted by other evidence***”.^[14] In *Raynera*, the death of the victim was solely attributable to his own negligence in bumping the rear of the trailer truck which was traveling ahead of him at 20 to 30 kilometers per hour. *Raynera*, being the driver of the rear vehicle, had full control of the situation as he was in a position to observe the vehicle in front of him. The trailer truck therein did not make a sudden left turn as in the case at bar. Thus, the theory that drivers of vehicles “who bump the rear of another vehicle” are presumed to be the cause of the accident is, as in this case, sufficiently contradicted by evidence, which is the sudden left turn made by Reynaldo which proximately caused the collision.

While we agree with the trial court that Ray was likewise guilty of contributory negligence as defined under Article 2179 of the Civil Code, we find it equitable to increase the ratio of apportionment of damages on account of the victim’s negligence.

Article 2179 reads as follows:

When the plaintiff’s negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant’s lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence.^[15] The determination of the mitigation of the defendant’s liability varies depending on the circumstances of each case. The Court had sustained a mitigation of 50% in *Rakes v. AG & P*;^[16] 20% in *Phoenix Construction, Inc. v. Intermediate Appellate Court*^[17] and *LBC Air Cargo, Inc. v. Court of Appeals*;^[18] and 40% in *Bank of the Philippine Islands v. Court of Appeals*^[19] and *Philippine Bank of Commerce v. Court of Appeals*.^[20]

In the case at bar, it was established that Ray, at the time of the mishap: (1) was driving the motorcycle at a high speed; (2) was tailgating the Tamaraw jeepney; (3) has imbibed one or two bottles of beer; and (4) was not wearing a protective helmet.^[21] These circumstances, although not constituting the proximate cause of his demise and injury to Sergio, contributed to the same result. The contribution of these circumstances are all considered and determined in terms of percentages of the total cause. Hence, pursuant to *Rakes v. AG & P*, the heirs of Ray Castillon shall recover damages only up to 50% of the award. In other words, 50% of the damage shall be borne by the private respondents; the remaining 50% shall be paid by the petitioner.

Anent the award of loss of earning capacity, we agree with the petitioner that the trial court erred in the computation of the net earnings.

In considering the earning capacity of the victim as an element of damages, the