

SECOND DIVISION

[G.R. NO. 137772, August 29, 2005]

**AMADOR CORPUZ AND ROMEO GONZALES, PETITIONERS, VS.
EDISON LUGUE AND CATHERINE BALUYOT, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Court of Appeals Decision^[1] affirming the Regional Trial Court (RTC) decision^[2] finding herein petitioners liable for the injuries suffered by respondent Edison Lague as a result of an accident involving four (4) vehicles, one of which was then driven by petitioner Romeo Gonzales and owned by petitioner Amador Corpuz.

The pertinent facts are as follows:

On 14 September 1984, at around 7:15 in the morning, while an Isuzu KC-20 passenger jeep (KC-20), then being driven by Jimmy Basilio, was traversing the right side of the Roman Highway in Barangay Pias, Orion, Bataan, it collided with a tanker truck driven by Gerardo Lim, which was then moving from the right shoulder of the highway. As a result of the collision, the KC-20 was thrown towards the left lane of the highway where it was bumped by a Mazda minibus (minibus) being driven by herein petitioner Gonzales who was then trying to overtake the KC-20. At that point, the KC-20 spun and bumped a Transcon service truck parked on the left side of the highway. As a result of the impact, the KC-20 was thrown across the highway where it was again hit by the minibus pushing the former towards a deep portion on the left side of the road. As a consequence of the accident, passengers of the KC-20, including respondent Lague, suffered physical injuries.

To summarize, the parties involved in the vehicular accident are as follows:

VEHICLE	OWNER	DRIVER
Isuzu KC-20	Ricardo Santiago	Jimmy Basilio
Tanker Truck	Oscar Jaring	Gerardo Lim
Mazda minibus	Amador Corpuz	Romeo Gonzales

Respondent Lague then filed an action for damages arising from the vehicular incident before the Balanga, Bataan RTC, Branch 2, against herein petitioners Amador Corpuz and Romeo Gonzales, owner and driver of the minibus, respectively, and Oscar Jaring and Gerardo Lim, owner and driver of the tanker truck, respectively. Therein defendants filed a third-party complaint against Ricardo Santiago and Jimmy Basilio, owner/operator and driver of the KC-20, respectively.

After trial, the lower court rendered a decision holding jointly and severally liable Ricardo Santiago, Jimmy Basilio, Oscar Jaring, Gerardo Lim, Amador Corpuz, and

Romeo Gonzales. The appurtenant portions of the decision read:

There are two (2) versions of the accident in question respectively espoused by the several parties in the instant case. One version is that put forth by plaintiff Edison Lague (including his witness Remigio Gervacio) and also by defendants and third-party plaintiffs Amador Corpuz and Romeo Gonzales. The other version is that advanced by defendants and third-party plaintiffs Oscar Jaring and Gerardo Lim.

These two versions shall be discussed and their respective merits analyzed. Whichever version is found to be plausible shall determine the *proximate cause* earlier mentioned.

(1) The Lague-Corpuz version:

The Isuzu KC-20 Edison Lague was riding on the date in question was being driven by third-party defendant Jimmy Basilio on the center of the right lane of the national highway headed toward Lamao, Limay, Bataan. When said KC-20 was about 25 to 30 meters from the tanker truck owned by defendant Oscar Jaring, which tanker truck was then just beginning to make a headstart from its former parked position on the right shoulder of said highway, the portion on the left headlight of the tanker truck bumped the KC-20 on its middle portion of the right side. As a result, the KC-20 was thrown to the left side of the highway facing Mariveles and, immediately thereafter, it was bumped by the Mazda minibus owned by defendant Amador Corpuz and then driven by defendant Romeo Gonzales. As a result of such second bumping of the KC-20, it spun and bumped a service truck of the Transcon which was parked on the left side of the highway facing Mariveles. Finally, the KC-20 fell crumpled on the left concrete lane of the road facing Balanga.

(2) The Jaring-Lim version:

While third-party plaintiff Oscar Jaring's tanker truck was parked on the asphalted shoulder on the right side of the highway near the Caltex at Barangay Pias, Townsite, Limay, Bataan, on the date in question, and he was having some invoices recorded by Caltex employees at the guardhouse, which was some ten and a half (10-1/2) meters away from said tanker truck, he was not looking at said truck and the KC-20. But just the same he testified that the right fender of the KC-20 hit the left front portion of the fender of the tanker truck. As a result, the KC-20 went to the other side of the road, where it was bumped by the minibus behind it. Then the KC-20 hit the rear portion of the Transcon service truck. The minibus bumped the KC-20 again, after which the latter continued on toward Mariveles for about 100 meters until it finally fell into a deep portion of the road.

. . .

It will be noted that the Lague-Corpuz version was testified to by at least four (4) witnesses – Edison Lague, Remigio Gervacio, Patrocinio Carillo and Romeo Gonzales, whereas the Jaring-Lim version was testified to by only one (1) witness – Ricardo Puno. Oscar Jaring himself did not testify

to having witnessed the incident. On the other hand, the driver of the tanker truck defendant Gerardo Lim, admitted expressly in his oral testimony that he was at the guardhouse at the time the accident happened, because he was having some invoices recorded by the Caltex employees. Clearly, therefore, he did not witness the accident involving the KC-20 and the tanker truck because he was not looking at said two vehicles. Whatever version he testified to of the subject accident could not have been otherwise than pure hearsay.

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From the foregoing discussion of the respective two versions of the subject accident and the evidence adduced, it would appear that –

(1) The tanker truck owned by defendant Oscar Jaring, whose authorized driver at the time of the accident was defendant Gerardo Lim, was not actually parked completely (if it was parked at all) on the right shoulder of the national highway where the accident took place, witness Ricardo Puno testified or as defendant Jaring's photograph marked as Exhibits "1," "1-A" and "1-B" would tend to show. If it was parked at all, the plausible likelihood was that it was so parked that while its right front and rear wheels were touching the right asphalted shoulder of that highway, however its left front and rear wheels were actually on the concrete right lane of said highway, with its left front fender and bumper protruding well into said right lane, thus constituting a stumbling block to vehicles traveling on such right lane facing the direction where plaintiff Edison Lague was going then.

This conclusion is bolstered by the obvious fact that from said photograph Exhibit "1" it can be seen that the right bumper of the tanker truck appears to have detached from its former connection to the left front portion of the tanker truck and such left end now appears to have been bent forward. The fender of the same truck also appears to have been damaged on the same left side, with a vertical long portion cut from said fender.

If said tanker truck was thus parked as posted in the two foregoing paragraphs, then it had been parked in a negligent manner by its driver, who thereby did not exercise ordinary or simple human prudence or foresight to avoid any portion of said truck from obstructing the way of any oncoming motor vehicle being driven on said right or proper lane of the highway. Any normal or average human being, especially a motor vehicle driver, ought to know that the concrete lanes of highways are intended to be traversed by motor vehicles and are not intended to be used as parking areas. Even in case of emergency, only the shoulders of such highways may be used for parking purposes.

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(3) There was also the possibility testified to by plaintiff Edison Lague, his witness Remigio Gervacio and defendant Romeo Gonzales to the effect that the tanker truck was not actually parked but was actually

already moving or being driven from its former parked position and its left front wheel (and perhaps even the left rear wheels) had occupied a portion of the concrete right lane of the highway which was also being traversed then by the KC-20.

This possibility is silently corroborated by the condition of the front bumper and fender of the tanker truck depicted in the photograph marked as Exhibit "1," as already described hereinbefore, having in mind the fact that not a single witness testified to having seen the Isuzu KC-20 leave the concrete right lane and occupy the asphalted shoulder.

On the plane of logic, this version is also supported by the undisputed fact testified by practically all the witnesses who testified that after the physical contact between the tanker truck and the KC-20, the latter vehicle was shoved from its proper right lane to the left lane as a result of the impact. Such resulting shoving effect could have been the consequence of the push it got from the tanker truck which was already moving then toward the concrete right lane.

(4) On the other hand, neither may the Lugue-Corpuz version on the physical contact between the KC-20 and the tanker truck be swallowed or considered as entirely correct. This version attempts to show that the tanker truck, while being initially driven away from the right asphalted shoulder of the highway into the concrete right lane of said highway, bumped with its left side the right middle portion of the body of said KC-20, thus causing the latter to be shoved to the left concrete lane of said highway, where it was bumped by the passing or overtaking Mazda minibus.

Plaintiff Edison Lague himself testified on direct examination that the first time he saw the tanker truck was when the KC-20 was about 25 to 30 meters from said truck. At that time, he said, the truck was just beginning to make a headstart and was still on the asphalted shoulder of the highway. On cross-examination, he modified that distance between the two vehicles the first time he saw them to "from 20 to 35 meters." He also stated that at that distance from the truck, the KC-20 did not slow down until it was bumped by the truck; and that all of the four wheels of the truck were originally occupying the shoulder of the highway.

If all of the wheels of the tanker truck had originally been occupying the asphalted shoulder of the highway and said vehicle was just beginning to make a headstart toward the right concrete lane of the highway, then the most probable course or direction of said truck could have been forward but slightly oblique toward its left. Very likely, the truck was still running on first gear, which means it was still going very slowly. Even plaintiff Edison Lague and driver Romeo Gonzales of the Mazda minibus following the KC-20 did not say that the tanker truck was being driven squarely across the right lane of the highway.

If defendant driver Jimmy Basilio of the KC-20 had seen the tanker truck while at a distance of 20 to 35 meters away from it, if he had been

prudent and careful he could still avoid having his vehicle get in physical contact with said truck. That distance was still adequate for him to swerve the steering wheel slightly to the left so as to avoid such truck getting in contact with his KC-20. But there is no showing whatsoever that he did that. A number of possibilities present themselves.

(a) Because Jimmy Basilio was driving the KC-20 fast, as Lague stated, he must have calculated that it could already safely pass the truck without the need of swerving the steering wheel even slightly to the left.

(b) Basilio might have had in mind the Mazda minibus which was trailing the KC-20 and which was going through the motions of passing or overtaking such KC-20. He may have calculated that if he would swerve the KC-20 even slightly to the left, it might go directly on the path of the minibus. So he avoided swerving the KC-20 and went steadily forward, hoping to safely pass the tanker truck at the fast rate of speed he was then driving. Plaintiff Lague testified that the KC-20 he was riding in did not change course or position on the right lane of the highway just before the bumping occurred. In other words, the KC-20 did not change course nor relax its speed before the actual physical contact between the tanker truck and the KC-20.

In such a situation, wherein there was a truck starting to crawl on the right lane traversed by the KC-20 and there was a minibus trailing it, and in the process of passing or overtaking the KC-20, the driver of the minibus (sic) was expected to exercise caution and prudence to avoid hitting or being hit by either or both other motor vehicles before it or trailing it, the fact that the driver of the KC-20 did not either slacken his speed or even swerve his steering wheel, however slightly, to avoid hitting or being hit by the tanker truck bespeaks reckless imprudence on the part of third-party defendant Jimmy Basilio as driver of said KC-20. Had he even only slackened the speed of the KC-20, he could have avoided any contact between it and the tanker truck, given that distance of "25 to 35 meters" from said truck when the latter was first seen. He chose not to do so.

"Reckless imprudence consists in the doing or failing to do an act, voluntarily, but without malice, from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. (Art. 365, Revised Penal Code)"

...

(3) Defendant Gerardo Lim, as driver of the subject tanker truck with Plate No. CVC-563 Phil. '84 on the date in question, has been shown to have been grossly negligent in either (a) improperly parking his said truck on the right lane of the national highway instead of totally on the asphalted shoulder of said highway, or (b) driving said tanker truck from said shoulder of the highway into the right lane of said highway without previously carefully observing and making sure that no other vehicle was