

SECOND DIVISION

[G.R. No. 138060, September 01, 2004]

**WILLIAM TIU, DOING BUSINESS UNDER THE NAME AND STYLE
OF "D' ROUGH RIDERS," AND VIRGILIO TE LAS PIÑAS
PETITIONERS, VS. PEDRO A. ARRIESGADO, BENJAMIN CONDOR,
SERGIO PEDRANO AND PHILIPPINE PHOENIX SURETY AND
INSURANCE, INC., RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court from the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 54354 affirming with modification the Decision^[2] of the Regional Trial Court, 7th Judicial Region, Cebu City, Branch 20, in Civil Case No. CEB-5963 for breach of contract of carriage, damages and attorney's fees, and the Resolution dated February 26, 1999 denying the motion for reconsideration thereof.

The following facts are undisputed:

At about 10:00 p.m. of March 15, 1987, the cargo truck marked "Condor Hollow Blocks and General Merchandise" bearing plate number GBP-675 was loaded with firewood in Bogo, Cebu and left for Cebu City. Upon reaching Sitio Aggies, Poblacion, Compostela, Cebu, just as the truck passed over a bridge, one of its rear tires exploded. The driver, Sergio Pedrano, then parked along the right side of the national highway and removed the damaged tire to have it vulcanized at a nearby shop, about 700 meters away.^[3] Pedrano left his helper, Jose Mitante, Jr. to keep watch over the stalled vehicle, and instructed the latter to place a spare tire six fathoms away^[4] behind the stalled truck to serve as a warning for oncoming vehicles. The truck's tail lights were also left on. It was about 12:00 a.m., March 16, 1987.

At about 4:45 a.m., D' Rough Riders passenger bus with plate number PBP-724 driven by Virgilio Te Laspiñas was cruising along the national highway of Sitio Aggies, Poblacion, Compostela, Cebu. The passenger bus was also bound for Cebu City, and had come from Maya, Daanbantayan, Cebu. Among its passengers were the Spouses Pedro A. Arriesgado and Felisa Pepito Arriesgado, who were seated at the right side of the bus, about three (3) or four (4) places from the front seat.

As the bus was approaching the bridge, Laspiñas saw the stalled truck, which was then about 25 meters away.^[5] He applied the breaks and tried to swerve to the left to avoid hitting the truck. But it was too late; the bus rammed into the truck's left rear. The impact damaged the right side of the bus and left several passengers injured. Pedro Arriesgado lost consciousness and suffered a fracture in his right

colles.^[6] His wife, Felisa, was brought to the Danao City Hospital. She was later transferred to the Southern Island Medical Center where she died shortly thereafter.

^[7]

Respondent Pedro A. Arriesgado then filed a complaint for breach of contract of carriage, damages and attorney's fees before the Regional Trial Court of Cebu City, Branch 20, against the petitioners, D' Rough Riders bus operator William Tiu and his driver, Virgilio Te Laspiñas on May 27, 1987. The respondent alleged that the passenger bus in question was cruising at a fast and high speed along the national road, and that petitioner Laspiñas did not take precautionary measures to avoid the accident.^[8] Thus:

6. That the accident resulted to the death of the plaintiff's wife, Felisa Pepito Arriesgado, as evidenced by a Certificate of Death, a xerox copy of which is hereto attached as integral part hereof and marked as ANNEX – "A", and physical injuries to several of its passengers, including plaintiff himself who suffered a "COLLES FRACTURE RIGHT," per Medical Certificate, a xerox copy of which is hereto attached as integral part hereof and marked as ANNEX – "B" hereof.
7. That due to the reckless and imprudent driving by defendant Virgilio Te Laspiñas of the said Rough Riders passenger bus, plaintiff and his wife, Felisa Pepito Arriesgado, failed to safely reach their destination which was Cebu City, the proximate cause of which was defendant-driver's failure to observe utmost diligence required of a very cautious person under all circumstances.
8. That defendant William Tiu, being the owner and operator of the said Rough Riders passenger bus which figured in the said accident, wherein plaintiff and his wife were riding at the time of the accident, is therefore directly liable for the breach of contract of carriage for his failure to transport plaintiff and his wife safely to their place of destination which was Cebu City, and which failure in his obligation to transport safely his passengers was due to and in consequence of his failure to exercise the diligence of a good father of the family in the selection and supervision of his employees, particularly defendant-driver Virgilio Te Laspiñas.^[9]

The respondent prayed that judgment be rendered in his favor and that the petitioners be condemned to pay the following damages:

- 1). To pay to plaintiff, jointly and severally, the amount of ₱30,000.00 for the death and untimely demise of plaintiff's wife, Felisa Pepito Arriesgado;
- 2). To pay to plaintiff, jointly and severally, the amount of ₱38,441.50, representing actual expenses incurred by the plaintiff in connection with the death/burial of plaintiff's wife;
- 3). To pay to plaintiff, jointly and severally, the amount of ₱1,113.80, representing medical/hospitalization expenses incurred by plaintiff for the injuries sustained by him;

- 4). To pay to plaintiff, jointly and severally, the amount of P50,000.00 for moral damages;
- 5). To pay to plaintiff, jointly and severally, the amount of P50,000.00 by way of exemplary damages;
- 6). To pay to plaintiff, jointly and severally, the amount of P20,000.00 for attorney's fees;
- 7). To pay to plaintiff, jointly and severally, the amount of P5,000.00 for litigation expenses.

PLAINTIFF FURTHER PRAYS FOR SUCH OTHER RELIEFS AND REMEDIES IN LAW AND EQUITY.^[10]

The petitioners, for their part, filed a Third-Party Complaint^[11] on August 21, 1987 against the following: respondent Philippine Phoenix Surety and Insurance, Inc. (PPSII), petitioner Tiu's insurer; respondent Benjamin Condor, the registered owner of the cargo truck; and respondent Sergio Pedrano, the driver of the truck. They alleged that petitioner Laspiñas was negotiating the uphill climb along the national highway of *Sitio Aggies, Poblacion, Compostela*, in a moderate and normal speed. It was further alleged that the truck was parked in a slanted manner, its rear portion almost in the middle of the highway, and that no early warning device was displayed. Petitioner Laspiñas promptly applied the brakes and swerved to the left to avoid hitting the truck head-on, but despite his efforts to avoid damage to property and physical injuries on the passengers, the right side portion of the bus hit the cargo truck's left rear. The petitioners further alleged, thus:

5. That the cargo truck mentioned in the aforequoted paragraph is owned and registered in the name of the third-party defendant Benjamin Condor and was left unattended by its driver Sergio Pedrano, one of the third-party defendants, at the time of the incident;
6. That third-party defendant Sergio Pedrano, as driver of the cargo truck with marked (*sic*) "Condor Hollow Blocks & General Merchandise," with Plate No. GBP-675 which was recklessly and imprudently parked along the national highway of Compostela, Cebu during the vehicular accident in question, and third-party defendant Benjamin Condor, as the registered owner of the cargo truck who failed to exercise due diligence in the selection and supervision of third-party defendant Sergio Pedrano, are jointly and severally liable to the third-party plaintiffs for whatever liability that may be adjudged against said third-party plaintiffs or are directly liable of (*sic*) the alleged death of plaintiff's wife;
7. That in addition to all that are stated above and in the answer which are intended to show reckless imprudence on the part of the third-party defendants, the third-party plaintiffs hereby declare that during the vehicular accident in question, third-party defendant was

clearly violating Section 34, par. (g) of the Land Transportation and Traffic Code...

...

10. That the aforesaid passenger bus, owned and operated by third-party plaintiff William Tiu, is covered by a common carrier liability insurance with Certificate of Cover No. 054940 issued by Philippine Phoenix Surety and Insurance, Inc., Cebu City Branch, in favor of third-party plaintiff William Tiu which covers the period from July 22, 1986 to July 22, 1987 and that the said insurance coverage was valid, binding and subsisting during the time of the aforementioned incident (Annex "A" as part hereof);
11. That after the aforesaid alleged incident, third-party plaintiff notified third-party defendant Philippine Phoenix Surety and Insurance, Inc., of the alleged incident hereto mentioned, but to no avail;
12. That granting, et arguendo et arguendi, if herein third-party plaintiffs will be adversely adjudged, they stand to pay damages sought by the plaintiff and therefore could also look up to the Philippine Phoenix Surety and Insurance, Inc., for contribution, indemnification and/or reimbursement of any liability or obligation that they might [be] adjudged per insurance coverage duly entered into by and between third-party plaintiff William Tiu and third-party defendant Philippine Phoenix Surety and Insurance, Inc.;...^[12]

The respondent PPSII, for its part, admitted that it had an existing contract with petitioner Tiu, but averred that it had already attended to and settled the claims of those who were injured during the incident.^[13] It could not accede to the claim of respondent Arriesgado, as such claim was way beyond the scheduled indemnity as contained in the contract of insurance. ^[14]

After the parties presented their respective evidence, the trial court ruled in favor of respondent Arriesgado. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff as against defendant William Tiu ordering the latter to pay the plaintiff the following amounts:

- 1 - The sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages;
- 2 - The sum of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages;
- 3 - The sum of THIRTY-EIGHT THOUSAND FOUR HUNDRED FORTY-ONE PESOS (P38,441.00) as actual damages;
- 4 - The sum of TWENTY THOUSAND PESOS (P20,000.00) as attorney's fees;

5 - The sum of FIVE THOUSAND PESOS (P5,000.00) as costs of suit;

SO ORDERED.^[15]

According to the trial court, there was no dispute that petitioner William Tiu was engaged in business as a common carrier, in view of his admission that D' Rough Rider passenger bus which figured in the accident was owned by him; that he had been engaged in the transportation business for 25 years with a sole proprietorship; and that he owned 34 buses. The trial court ruled that if petitioner Laspiñas had not been driving at a fast pace, he could have easily swerved to the left to avoid hitting the truck, thus, averting the unfortunate incident. It then concluded that petitioner Laspiñas was negligent.

The trial court also ruled that the absence of an early warning device near the place where the truck was parked was not sufficient to impute negligence on the part of respondent Pedrano, since the tail lights of the truck were fully on, and the vicinity was well lighted by street lamps.^[16] It also found that the testimony of petitioner Tiu, that he based the selection of his driver Laspiñas on efficiency and in-service training, and that the latter had been so far an efficient and good driver for the past six years of his employment, was insufficient to prove that he observed the diligence of a good father of a family in the selection and supervision of his employees.

After the petitioner's motion for reconsideration of the said decision was denied, the petitioners elevated the case to the Court of Appeals on the following issues:

- I. WHETHER THIRD PARTY DEFENDANT SERGIO PEDRANO WAS RECKLESS AND IMPRUDENT WHEN HE PARKED THE CARGO TRUCK IN AN OBLIQUE MANNER;
- II. WHETHER THE THIRD PARTY DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE DIRECTLY TO PLAINTIFF-APPELLEE OR TO DEFENDANTS-APPELLANTS FOR WHATEVER LIABILITY THAT MAY BE ADJUDGED TO THE SAID DEFENDANTS-APPELLANTS;
- III. WHETHER DEFENDANT-APPELLANT VIRGILIO TE LASPIÑAS WAS GUILTY OF GROSS NEGLIGENCE;
- IV. WHETHER DEFENDANT-APPELLANT WILLIAM TIU HAD EXERCISED THE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF HIS DRIVERS;
- V. GRANTING FOR THE SAKE OF ARGUMENT THAT DEFENDANT-APPELLANT WILLIAM TIU IS LIABLE TO PLAINTIFF-APPELLEE, WHETHER THERE IS LEGAL AND FACTUAL BASIS IN AWARDING EXCESSIVE MORAL DAMAGES, EX[E]MPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES TO PLAINTIFF-APPELLEE;
- VI. WHETHER THIRD PARTY DEFENDANT PHILIPPINE PHOENIX SURETY AND INSURANCE, INC. IS LIABLE TO DEFENDANT- APPELLANT WILLIAM TIU.^[17]