

SECOND DIVISION

[G. R. No. 154278, December 27, 2002]

**VICTORY LINER, INC. PETITIONER, VS. HEIRS OF ANDRES
MALECDAN, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review of the decision^[1] of the Eighth Division of the Court of Appeals, which affirmed the decision^[2] of the Regional Trial Court of Baguio City, Branch 5, in Civil Case No. 3082-R, ordering petitioner and its driver, Ricardo Joson, Jr., to pay damages to the heirs of Andres Malecdan, who had been killed after being hit by a bus while attempting to cross the National Highway in Barangay Nungnungan 2 in Cauayan, Isabela.

The facts of the case are as follows:

Petitioner is a common carrier. Private respondent Elena Malecdan is the widow of the deceased, while private respondents Veronica, Virginia, Mary Pauline, Arthur, Viola, Manuel and Valentin Malecdan are their children.

Andres Malecdan was a 75 year-old farmer residing in Barangay Nungnungan 2, Municipality of Cauayan, Province of Isabela.^[3] On July 15, 1994, at around 7:00 p.m., while Andres was crossing the National Highway on his way home from the farm, a Dalin Liner bus on the southbound lane stopped to allow him and his carabao to pass. However, as Andres was crossing the highway, a bus of petitioner Victory Liner, driven by Ricardo C. Joson, Jr., bypassed the Dalin bus. In so doing, respondent hit the old man and the carabao on which he was riding. As a result, Andres Malecdan was thrown off the carabao, while the beast toppled over.^[4] The Victory Liner bus sped past the old man, while the Dalin bus proceeded to its destination without helping him.

The incident was witnessed by Andres Malecdan's neighbor, Virgilio Lorena, who was resting in a nearby waiting shed after working on his farm. Malecdan sustained a wound on his left shoulder, from which bone fragments protruded. He was taken by Lorena and another person to the Cagayan District Hospital where he died a few hours after arrival.^[5] The carabao also died soon afterwards.^[6] Lorena executed a sworn statement before the police authorities. Subsequently, a criminal complaint for reckless imprudence resulting in homicide and damage to property was filed against the Victory Liner bus driver Ricardo Joson, Jr.^[7]

On October 5, 1994, private respondents brought this suit for damages in the Regional Trial Court, Branch 5, Baguio City,^[8] which, in a decision rendered on July 17, 2000, found the driver guilty of gross negligence in the operation of his vehicle and Victory Liner, Inc. also guilty of gross negligence in the selection and

supervision of Joson, Jr. Petitioner and its driver were held liable for damages. The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally to the plaintiffs the amounts of:

- a. P50,000.00 as death indemnity;
- b. P88,339.00 for actual damages;
- c. P200,000.00 for moral damages;
- d. P50,000.00 as exemplary damages;
- e. Thirty percent (30%) as attorney's fees of whatever amount that can be collected by the plaintiff; and
- f. The costs of the suit.

The counterclaim of the defendant Victory Liner, Inc. against the plaintiffs and the third-party complaint of the same defendant against the Zenith Insurance Corporation are dismissed.

SO ORDERED.^[9]

On appeal, the decision was affirmed by the Court of Appeals, with the modification that the award of attorney's fees was fixed at P50,000.00.^[10]

Hence, this appeal raising the following issues:

- I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPEALED DECISION OF THE REGIONAL TRIAL COURT GRANTING P200,000.00 AS MORAL DAMAGES WHICH IS DOUBLE THE P100,000.00 AS PRAYED FOR BY THE PRIVATE RESPONDENTS IN THEIR COMPLAINT AND IN GRANTING ACTUAL DAMAGES NOT SUPPORTED BY OFFICIAL RECEIPTS AND SPENT WAY BEYOND THE BURIAL OF THE DECEASED VICTIM.
- II. WHETHER OR NOT THE AFFIRMATION BY THE HONORABLE COURT OF APPEALS OF THE APPEALED DECISION OF THE REGIONAL TRIAL COURT GRANTING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES WHICH WERE NOT PROVED AND CONSIDERING THAT THERE IS NO FINDING OF BAD FAITH AND GROSS NEGLIGENCE ON THE PART OF THE PETITIONER WAS NOT ESTABLISHED, IS IN ACCORD WITH LAW AND JURISPRUDENCE.
- III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPEALED DECISION OF THE REGIONAL TRIAL COURT WHICH DISREGARDED THE APPELLANT'S TESTIMONIAL AND DOCUMENTARY EVIDENCE THAT IT HAS EXERCISED EXTRAORDINARY DILIGENCE IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES, OR STATED DIFFERENTLY, WHETHER OR NOT THE AFFIRMATION BY THE COURT OF APPEALS OF THE APPEALED DECISION OF THE TRIAL COURT THAT IS CONTRARY TO LAW AND JURISPRUDENCE CONSTITUTES GRAVE ABUSE AND EXCESS OF JURISDICTION.^[11]

We find the appealed decision to be in order.

First. Victory Liner, Inc. no longer questions the findings of the Regional Trial Court that Andres Malecdan was injured as a result of the gross negligence of its driver, Ricardo Joson, Jr. What petitioner now questions is the finding that it (petitioner) failed to exercise the diligence of a good father of the family in the selection and supervision of its employee. Petitioner argues,

With all due respect, the assignment of three inspectors to check and remind the drivers of petitioner Victory Liner of its policies in a two-and-a-half hour driving distance, the installation of tachometers to monitor the speed of the bus all throughout the trip, the periodic monitoring and checking of the trips from one station to another through a trip ticket from station to station, the regular periodic conducting of safety and defensive driving [training sessions] for its drivers are concrete and physical proofs of the formulated operating standards, the implementation and monitoring of the same, designed for the exercise of due diligence of a good father of a family in the supervision of its employees.^[12]

It explained that it did not present bus driver Joson, Jr. on the witness stands because he had been dismissed from the company after the incident, which it found was a breach in the company regulations. Petitioner blames private respondents for the death of their father, Andres Malecdan, who was already 75 years old, for allowing him to plough their field by himself.^[13]

The contention has no merit.

Article 2176 provides:

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Article 2180 provides for the solidary liability of an employer for the quasi-delict committed by an employee. The responsibility of employers for the negligence of their employees in the performance of their duties is primary and, therefore, the injured party may recover from the employers directly, regardless of the solvency of their employees.^[14] The rationale for the rule on vicarious liability has been explained thus:

What has emerged as the modern justification for vicarious liability is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the tort of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them and to distribute them, through prices, rates or