

## SECOND DIVISION

[ G.R. No. 128607, January 31, 2000 ]

**ALFREDO MALLARI SR. AND ALFREDO MALLARI JR.,  
PETITIONERS, VS. COURT OF APPEALS AND BULLETIN  
PUBLISHING CORPORATION, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

ALFREDO MALLARI SR. and ALFREDO MALLARI JR. in this petition for review on certiorari seek to set aside the Decision of the Court of Appeals<sup>[1]</sup> which reversed the court *a quo* and adjudged petitioners to be liable for damages due to negligence as a common carrier resulting in the death of a passenger.

On 14 October 1987, at about 5:00 o'clock in the morning, the passenger jeepney driven by petitioner Alfredo Mallari Jr. and owned by his co-petitioner Alfredo Mallari Sr. collided with the delivery van of respondent Bulletin Publishing Corp. (BULLETIN, for brevity) along the National Highway in Barangay San Pablo, Dinalupihan, Bataan. Petitioner Mallari Jr. testified that he went to the left lane of the highway and overtook a Fiera which had stopped on the right lane. Before he passed by the Fiera, he saw the van of respondent BULLETIN coming from the opposite direction. It was driven by one Felix Angeles. The sketch of the accident showed that the collision occurred after Mallari Jr. overtook the Fiera while negotiating a curve in the highway. The points of collision were the left rear portion of the passenger jeepney and the left front side of the delivery van of BULLETIN. The two (2) right wheels of the delivery van were on the right shoulder of the road and pieces of debris from the accident were found scattered along the shoulder of the road up to a certain portion of the lane travelled by the passenger jeepney. The impact caused the jeepney to turn around and fall on its left side resulting in injuries to its passengers one of whom was Israel Reyes who eventually died due to the gravity of his injuries.

On 16 December 1987 Claudia G. Reyes, the widow of Israel M. Reyes, filed a complaint for damages with the Regional Trial Court of Olongapo City against Alfredo Mallari Sr. and Alfredo Mallari Jr., and also against BULLETIN, its driver Felix Angeles, and the N.V. Netherlands Insurance Company. The complaint alleged that the collision which resulted in the death of Israel Reyes was caused by the fault and negligence of both drivers of the passenger jeepney and the Bulletin Isuzu delivery van. The complaint also prayed that the defendants be ordered jointly and severally to pay plaintiff ₱1,006,777.40 in compensatory damages, ₱40,000.00 for hospital and medical expenses, ₱18,270.00 for burial expenses plus such amounts as may be fixed by the trial court for exemplary damages and attorney's fees.

The trial court found that the proximate cause of the collision was the negligence of Felix Angeles, driver of the Bulletin delivery van, considering the fact that the left front portion of the delivery truck driven by Felix Angeles hit and bumped the left

rear portion of the passenger jeepney driven by Alfredo Mallari Jr. Hence, the trial court ordered BULLETIN and Felix Angeles to pay jointly and severally Claudia G. Reyes, widow of the deceased victim, the sums of ₱42,106.93 for medical expenses; ₱8,600.00 for funeral and burial expenses; ₱1,006,777.40 for loss of earning capacity; ₱5,000.00 for moral damages and ₱10,000.00 for attorney's fees. The trial court also ordered N.V. Netherlands Insurance Company to indemnify Claudia G. Reyes ₱12,000.00 as death indemnity and ₱2,500.00 for funeral expenses which when paid should be deducted from the liabilities of respondent BULLETIN and its driver Felix Angeles to the plaintiff. It also dismissed the complaint against the other defendants Alfredo Mallari Sr. and Alfredo Mallari Jr.

On appeal the Court of Appeals modified the decision of the trial court and found no negligence on the part of Angeles and consequently of his employer, respondent BULLETIN. Instead, the appellate court ruled that the collision was caused by the sole negligence of petitioner Alfredo Mallari Jr. who admitted that immediately before the collision and after he rounded a curve on the highway, he overtook a Fiera which had stopped on his lane and that he had seen the van driven by Angeles before overtaking the Fiera. The Court of Appeals ordered petitioners Mallari Jr. and Mallari Sr. to compensate Claudia G. Reyes ₱1,006,777.50 for loss of earning capacity, ₱50,000.00 as indemnity for death and ₱10,000.00 for attorney's fees. It absolved from any liability respondent BULLETIN, Felix Angeles and N.V. Netherlands Insurance Company. Hence this petition.

Petitioners contend that there is no evidence to show that petitioner Mallari Jr. overtook a vehicle at a curve on the road at the time of the accident and that the testimony of Angeles on the overtaking made by Mallari Jr. was not credible and unreliable. Petitioner also submits that the trial court was in a better position than the Court of Appeals to assess the evidence and observe the witnesses as well as determine their credibility; hence, its finding that the proximate cause of the collision was the negligence of respondent Angeles, driver of the delivery van owned by respondent BULLETIN, should be given more weight and consideration.

We cannot sustain petitioners. Contrary to their allegation that there was no evidence whatsoever that petitioner Mallari Jr. overtook a vehicle at a curve on the road at the time of or before the accident, the same petitioner himself testified that such fact indeed did occur -

Q: And what was that accident all about?

A: Well, what happened, sir, is that at about that time 5:00 o'clock in that morning of October 14 while I was negotiating on the highway at San Pablo, Dinalupihan, Bataan, I was then following a blue Ford Fierra and my distance behind was about twenty (20) feet and then I passed that blue Ford Fierra. I overtook and when I was almost on the right lane of the highway towards Olongapo City there was an oncoming delivery van of the Bulletin Publishing Corporation which bumped the left rear portion of the jeepney which I was driving and as a result of which the jeepney x x x turned around and fell on its left side and as a result of which some of my passengers including me were injured, sir x x x x