

SECOND DIVISION

[G.R. No. 127326, December 23, 1999]

**BENGUET ELECTRIC COOPERATIVE, INC., PETITIONER, VS.
COURT OF APPEALS, CARIDAD O. BERNARDO AS GUARDIAN AD
LITEM FOR MINORS JOJO, JEFFREY AND JO-AN, ALL SURNAMED
BERNARDO, AND GUILLERMO CANAVE, JR., RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This case involves a review on certiorari of the Decision of the Court of Appeals^[1] affirming with modification the decision of the Regional Trial Court of Baguio City, and ordering petitioner Benguet Electric Cooperative Inc. (BENECO) to pay Caridad O. Bernardo, as guardian ad litem of the three (3) minor children of the late Jose Bernardo P50,000.00 as indemnity for his death, with interest thereon at the legal rate from February 6, 1985, the date of the filing of the complaint, until fully paid, P100,000.00 for moral damages, P20,000.00 for exemplary damages, another P20,000.00 for attorney's fees, P864,000.00 for net income loss for the remaining thirty (30) years of the life expectancy of the deceased, and to pay the costs of suit.

The appellate court dismissed for lack of merit the counterclaim of BENECO against the Bernardos and its third party complaint against Guillermo Canave, Jr., as well as the latter's counterclaim.

For five (5) years up to the time of his death, Jose Bernardo managed a stall at the Baguio City meat market. On 14 January 1985 at around 7:50 in the morning, Jose together with other meat vendors went out of their stalls to meet a jeepney loaded with slaughtered pigs in order to select the meat they would sell for the day. Jose was the very first to reach the parked jeepney. Grasping the handlebars at the rear entrance of the vehicle, and as he was about to raise his right foot to get inside, Jose suddenly stiffened and trembled as though suffering from an epileptic seizure. Romeo Pimienta who saw Jose thought he was merely joking but noticed almost in disbelief that he was already turning black. In no time the other vendors rushed to Jose and they discovered that the antenna of the jeepney bearing the pigs had gotten entangled with an open electric wire at the top of the roof of a meat stall. Pimienta quickly got hold of a broom and pried the antenna loose from the open wire. But shortly after, Jose released his hold on the handlebars of the jeep only to slump to the ground. He died shortly in the hospital. Cause of his death was "cardio-respiratory arrest secondary to massive brain congestion with petheccial hemorrhage, brain bilateral pulmonary edema and congestion and endocardial petecchial hemorrhage and dilation (history of electrocution)."

On 6 February 1985 Caridad O. Bernardo, widow of Jose Bernardo, and their minor children, Jojo, Jeffrey and Jo-an, all surnamed Bernardo, filed a complaint against

BENECO before the Regional Trial Court of Baguio City for a sum of money and damages arising from the electrocution of Jose Bernardo. In the same civil action, BENECO filed a third-party complaint against Guillermo Canave, Jr., the jeepney owner.

In its decision dated 15 August 1994, the trial court ruled in favor of the Bernardos and ordered BENECO to pay them damages.^[2] Both petitioner and private respondents herein appealed to the Court of Appeals. On 5 November 1996 the appellate court promulgated its Decision which BENECO now assails contending inter alia that the appellate court gravely erred in ordering BENECO to pay damages in light of the clear evidence that it was third-party defendant Canave's fault or negligence which was the proximate and sole cause, or at least the principal cause, of the electrocution and death of Jose Bernardo.

First, BENECO questions the award of damages by respondent court notwithstanding a clear showing that the electrocution and death of Jose Bernardo were directly attributable to the fault and negligence of jeepney owner Guillermo Canave, Jr.

The records of the case show that respondent court did not commit any reversible error in affirming the findings of the trial court that BENECO was solely responsible for the untimely death of Jose Bernardo through accidental electrocution. According to the trial court, which we find substantiated by the records -^[3]

Through Virgilio Cerezo, a registered master electrician and presently the Chief Electrical Building Inspector of the General Services Division of the City of Baguio, who was tasked to investigate the electrocution of Bernardo, the plaintiffs adduced proof tending to show that the defendant BENECO installed a No. 2 high voltage main wire distribution line and a No. 6 service line to provide power at the temporary meat market on Hilltop Road. It put up a three-inch G.I. pipe pole to which the No. 2 main line was strung on top of a stall where a service drop line was connected. The height of the electrical connection from the No. 2 line to the service line was barely eight (8) to nine (9) feet (Exhibit "E"; See Exhibit "D-1") which is in violation of the Philippine Electrical Code which requires a minimum vertical clearance of fourteen (14) feet from the level of the ground since the wiring crosses a public street. Another violation according to Cerezo, is that the main line connected to the service line was not of rigid conduit wiring but totally exposed without any safety protection (Ibid). Worse, the open wire connections were not insulated (Ibid); See Exhibits "D-6", "D-6-A", "D-7"). The jeep's antenna which was more than eight (8) feet high (Exhibit "D-9") from the ground (It is about six to seven feet long and mounted on the left fender which is about three feet above the ground) got entangled with the open wire connections (Exhibit "D-8"), thereby electrically charging its handlebars which Bernardo held on to enter the vehicle resulting in his electrocution.

While Vedasto Augusto, an electrical engineer and the line superintendent in the electrical department of the defendant BENECO, admitted that the allowable vertical clearance of the service drop line is even 15 feet from the ground level and not only 14 feet, he and Jose Angeles, then an instrument man or surveyor of the BENECO, insisted that BENECO installed (they do not know by whom in particular) from the Apollo

Building nearby a service drop line carrying 220 volts which was attached to a G.I. pipe pole (Exhibits "1" and "1-A"). The vertical clearance of the point of attachment of the service drop line on the G.I. post to the ground is 15.5 feet (Exhibit "1-B"), which is more than the allowable 15-foot clearance. To this service drop line was connected the service entrance conductor (Exhibit "1-D") to supply power inside the premises to be serviced through an electric meter. At the lower portion of the splicing or connecting point between the service drop line and the service entrance conductor is a three to four-inch bare wire to serve as a ground. They saw the bare wire because the splicing point was exposed as it was not covered with tape (Exhibit "1-E"). The antenna of the jeep which electrocuted Bernardo got entangled with this exposed splicing point.

Augusto claimed that it was not BENECON's job to splice or connect the service entrance conductor to the service drop line but rather the owner of the premises to be serviced whose identity they did not, however, determine.

Significantly, on cross-examination, Augusto admitted that the service drop line that BENECON installed did not end at the point to which it is attached to the G.I. post. Rather, it passed through a spool insulator that is attached to the post (Exhibit "1-F") and extended down to where the service entrance conductor is spliced with the result that the exposed splicing point (Exhibit "1-E") is only about eight (8) feet from the ground level.

There is no question that as an electric cooperative holding the exclusive franchise in supplying electric power to the towns of Benguet province, its primordial concern is not only to distribute electricity to its subscribers but also to ensure the safety of the public by the proper maintenance and upkeep of its facilities. It is clear to us then that BENECON was grossly negligent in leaving unprotected and uninsulated the splicing point between the service drop line and the service entrance conductor, which connection was only eight (8) feet from the ground level, in violation of the Philippine Electrical Code. BENECON's contention that the accident happened only on January 14, 1985, around seven (7) years after the open wire was found existing in 1978, far from mitigating its culpability, betrays its gross neglect in performing its duty to the public.^[4] By leaving an open live wire unattended for years, BENECON demonstrated its utter disregard for the safety of the public. Indeed, Jose Bernardo's death was an accident that was bound to happen in view of the gross negligence of BENECON.

BENECON theorizes in its defense that the death of Jose Bernardo could be attributed to the negligence of Canave, Jr., in parking his jeepney so close to the market stall which was neither a parking area nor a loading area, with his antenna so high as to get entangled with an open wire above the Dimasupil store.^[5] But this line of defense must be discarded. Canave's act of parking in an area not customarily used for that purpose was by no means the independent negligent act adverted to by BENECON in citing *Manila Electric Co. v. Ronquillo*.^[6] Canave was well within his right to park the vehicle in the said area where there was no showing that any municipal law or ordinance was violated nor that there was any foreseeable danger posed by his act. One thing however is sure, no accident would have happened had BENECON

installed the connections in accordance with the prescribed vertical clearance of fifteen (15) feet.

Second. BENEKO avers that the Court of Appeals gravely erred in awarding P864,000.00 as net income loss for the thirty (30) years remaining of the life expectancy of the deceased Jose Bernardo, albeit the trial court found no firm basis for awarding this item of damages.

We recall that the trial court disallowed the award for net loss income in view of the alleged contradictory and untrustworthy testimony of the deceased's surviving spouse Caridad Bernardo. Thus -

As to lost earnings. The court finds the allegations of the plaintiffs, particularly Caridad Bernardo contradictory and untrustworthy. While in the complaint, which she herself verified, she asseverated that at the time of his death on January 14, 1985, her late husband was earning no less than P150.00 daily after deducting personal expenses and household and other family obligations; at the trial she bloated this up to P3,000.00 gross daily or P300.00 profit a day or a net income of P200.00 daily after deducting personal and household expenses. But inexplicably she could not present the income tax return of her husband for 1983 and 1984 although she stated that he had been filing such returns. What she submitted are his income tax returns for 1981 and 1982 showing a much lower annual gross income of P12,960.00 and P16,120.00, respectively. The Court, therefore, finds no firm basis for awarding this item of damages.

In modifying the decision of the trial court, the Court of Appeals relied on the testimony of Rosita Noefe, sister of the deceased, that her brother started as her helper in the several meat stalls she operated until 1982 when she allowed Jose to operate one of her stalls as his own and gave him an initial capital of P15,000.00 to add to his own. She explained that her brother sold from 100 to 150 kilos of pork and 30 to 50 kilos of meat a day earning an income of about P150.00 to P200.00 pesos daily. After deducting his personal expenses and family obligations, Jose earned a daily net income between P70.00 and P80.00. Jose Bernardo died of electrocution at the age of thirty-three (33). Following the ruling in *Villa Rey Transit v. Court of Appeals*^[7] and *Davila v. PAL*^[8] his life expectancy would allow him thirty and one third (30-1/3) years more. Assuming on the basis of his P80.00 daily net income translated to P2,400.00 monthly or P28,800.00 yearly, the net income loss for the thirty (30) years remaining of his life expectancy would amount to P864,000.00.^[9]

While we are of the opinion that private respondent Bernardo is entitled to indemnity for loss of earning capacity of her deceased husband we however find that a modification is in order. The amount corresponding to the loss of earning capacity is based mainly on two factors: (a) the number of years on the basis of which the damages shall be computed; and, (b) the rate at which the losses sustained by the widow and her children should be fixed.^[10]

We consider that the deceased was married with three (3) children and thirty-three (33) years old at the time of his death. By applying the formula: $\frac{2}{3} \times (80 - 33) =$ Life Expectancy, the normal life expectancy of the deceased would be thirty-one and